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No. _____

In the Supreme Court of the United States

October Term, 1980

TRANS INTERNATIONAL AIRLINES, INC.,
Petitioner,

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AIRLINE DIVISION; TEAMSTERS LOCAL 2707; MARVIN G. GRISWOLD; TEAMSTERS LOCAL 732; AND AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, AFL-CIO,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1) Whether under the Railway Labor Act, as amended, 45 U.S.C. §151 *et seq.*, a collective bargaining agreement providing that the agreement will continue as to part of a carrier's operations, after it has otherwise expired and after Section 6 has been exhausted as to the carrier's other operations, may be enforced by injunction compelling the Union to comply with its Section 2, First, obligation to maintain its agreement for the stated term?

2) Whether, under the facts stated above, the Norris-LaGuardia Act, 29 U.S.C. §101 *et seq.*, precludes the federal courts from enforcing by injunction a collective bargaining agreement partially limiting strikes?

3) Whether, under the Railway Labor Act, unions may be enjoined, under their Section 2, First, 45 U.S.C. §152 First, duty to "make and maintain" agreements, from compelling their members to engage in sympathy strikes during mid-contract?

4) Whether this Court's decision in *Buffalo Forge Co. v. United Steelworkers,* 428 U.S. 397 (1976), decided under the National Labor Relations Act, as amended, 29 U.S.C. §151 *et seq.* applies to sympathy strikes under the Railway Labor Act?

5) Whether parties to a collective bargaining agreement under the Railway Labor Act may contract to permit compulsory, union-sanctioned strikes in mid-term of the contract, despite the Act's Section 2, First, requirement to maintain contracts without strikes?

TABLE OF CONTENTS

Questions Presented I

Table of Authorities III

Opinions Below 2

Jurisdiction 2

Statutes Involved 3

Statement of the Case 3

Reasons for Granting the Writ 7

I. The Court of Appeals Has Erred in Ruling That a Clear Breach of a Binding Railway Labor Act Strike Limitation Agreement May Not Be Enforced by Injunction. The Court of Appeals Has Thereby Decided a Federal Question in a Way Which Conflicts With Applicable Decisions of This Court and of the Court of Appeals, Second Circuit 7

II. The Court of Appeals Refused to Recognize the Statutory Limitations on Sympathy Strikes Under the Railway Labor Act. This Raises an Important Question of Federal Law Which Has Not Been, but Should Be, Settled by This Court 14

Conclusion 23

Appendix A—Opinion of the District Court A1

Appendix B—Injunction Opinion of the District Court A9

Appendix C—Unreported District Court Injunction Opinion A19

Appendix D—Opinion of the Court of Appeals & Modifying Opinions A22

Appendix E—Opinion Denying Rehearing En Banc A83
Appendix F—Relevant Contractual No-Strike Provisions A85
Appendix G—National Mediation Board Index to Current Airline Contracts A88

TABLE OF AUTHORITIES

Cases

Boys Markets, Inc. v. Retail Clerks Union, 398 U.S. 235 (1970) 19, 20
Brotherhood of Locomotive Engineers v. Baltimore & Ohio R.R., 372 U.S. 284 (1963) 12
Brotherhood of R.R. Trainmen v. Chicago River & Indiana R.R., 353 U.S. 30 (1957) 16, 18, 19, 21
Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co., 394 U.S. 369 (1969) 8, 11, 12, 16
Brotherhood of Ry. & Steamship Clerks v. Florida East Coast Ry., 384 U.S. 238 (1966) 21
Buffalo Forge Co. v. United Steelworkers, 428 U.S. 397 (1976) 17, 18, 19, 20, 21
Chicago & North Western Ry. Co. v. United Transportation Union, 402 U.S. 570 (1971) 9, 11, 13, 16
Detroit & Toledo Shore Line R.R. v. United Transportation Union, 396 U.S. 142 (1969) 7, 12, 17, 20, 21
International Association of Machinists v. Central Airlines, 372 U.S. 682 (1963) 20
Long Island R.R. v. System Federation, 368 F.2d 50 (2d Cir. 1966) 9
McMullans v. Kansas, Oklahoma & Gulf Ry., 229 F.2d 50 (10th Cir.), *cert. denied* 351 U.S. 918 (1956) 11
O'Donnell v. Wien Air Alaska, Inc., 551 F.2d 1141 (9th Cir. 1977) 16

Piedmont Aviation, Inc. v. Air Line Pilots Association, Inter., 416 F.2d 633 (4th Cir. 1969) 9, 19
Ruby v. TACA International Airlines, 439 F.2d 1359 (5th Cir. 1971) 16
Seaboard World Airlines, Inc. v. Transport Workers Union, 425 F.2d 1086 (2d Cir. 1970), *reaff'd on further consideration* 443 F.2d 437 (1971) 9, 10, 11, 12, 19
Sinclair Refining Co. v. Atkinson, 370 U.S. 195 (1962), *overruled by, Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235 (1970) 19
Southern Pacific Transportation Co. v. Brotherhood of Ry., Airline & S.S. Clerks, 81 L.C. ¶13,113 (N.D. Cal. 1975) (not officially reported) 12, 13
Texas & New Orleans R.R. v. Brotherhood of Ry. & S.S. Clerks, 281 U.S. 548 (1930) 7, 11, 17
Trans International Airlines v. International Brotherhood of Teamsters, 103 L.R.R.M. 2669 10

STATUTES

Norris-LaGuardia Act, 29 U.S.C. §101 *et seq.* 3, 6, 18
Railway Labor Act, 45 U.S.C. §151 *et seq.* 3, 4, 8
National Labor Relations Act, 29 U.S.C. §151 *et seq.* 16
28 U.S.C. §1254(1) 3
28 U.S.C. §1331 5

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Trans International Airlines, Inc., respectfully petitions that a writ of certiorari issue to review the judgment of the United States Court of Appeals, Ninth Circuit, in this case.

OPINIONS BELOW

The District Court's opinion granting the temporary injunction against strikes of military operations by flight attendants is reprinted as Appendix A; this decision was not officially reported, but is reported at 96 L.R.R.M. 2763. The District Court's opinion enjoining flight engineers and pilots from sympathy strikes of military flights but refusing to enjoin sympathy strikes of commercial flights is reprinted as Appendix B; this decision is reported at 439 F.Supp. 184 and at 96 L.R.R.M. 2766. Appendix C is the District Court's unreported decision continuing the above injunctions and rejecting an "unclean hands" charge.

The slip opinion of the United States Court of Appeals, Ninth Circuit filed February 14, 1980, is annexed hereto as Appendix D. This opinion was modified by subsequent Orders dated March 14, 1980, and June 2, 1980, which are also reprinted as Appendix D. The Court of Appeals' Order denying rehearing *en banc* and making a further modification of the main opinion is reprinted as Appendix E.

For convenience, the relevant contractual no-strike and picket line clauses are annexed as Appendix F.

JURISDICTION

The initial decision of the Court of Appeals was filed February 14, 1980, and was modified by subsequent Orders dated March 14, 1980, and June 2, 1980 (Appendix D). The Court of Appeals Order denying rehearing *en banc* and further modifying the main opinion was issued June 27, 1980 (Appendix E).

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

STATUTES INVOLVED

Section 2, First, of the Railway Labor Act, 44 Stat. 577, as amended, 45 U.S.C. §152, First, provides:

> It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Section 4(a) of the Norris-LaGuardia Act, 44 Stat. 70, 29 U.S.C. §104(a), provides in relevant part:

> No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute . . . from doing, whether singly or in concert, any of the following acts:
>
> (a) Ceasing or refusing to perform any work or to remain in any relation of employment . . . .

STATEMENT OF THE CASE

Trans International Airlines, Inc. ("TIA") is one of the nation's largest supplemental air carriers.[1] Air carriers such as TIA provide substantial, necessary assistance to the military forces of the United States, by supplementing the military's own flight operations in transporting

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1. In 1979, TIA was renamed Transamerica Airlines, Inc.

military personnel and cargo around the world. It is common for such air carriers and the unions representing their employees to contract to continue such military flight operations even when engaged in a strike against civilian flight operations. A crucial issue in this case is whether such limited strike agreements are to have any meaning.

When the present dispute arose, TIA had an agreement with its Teamster flight attendants that explicitly provided for the continuation of that agreement as to military flying, even after they were freed by contract and by the Railway Labor Act, as amended, 45 U.S.C. §151 *et seq.*, ("RLA") to strike TIA's civilian flight operations.[2]

In February 1976, the International Brotherhood of Teamsters Airline Division ("IBT") served TIA with a "Section 6 notice,"[3] which triggered compulsory statutory procedures for resolving disputes over changes in the flight attendant agreement, pursuant to the RLA, 45 U.S.C. §§155, 156. The contract expired as to civilian operations on April 1, 1977. The flight attendants, in open breach of their military flying agreement, then struck TIA's military operations as well as its commercial operations. In addition, the Carrier's Teamster-represented flight engineers and the pilots, represented by the Air Line Pilots

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2. The TIA-Teamster clause read:

Article XII. No Strike-No Lockout, Section D. The Union further agrees that the Flight Attendants will continue to perform all duties which are necessary to enable the Company to operate flights for or in support of traffic sponsored by the Department of Defense of the United States of America, even though such Flight Attendants withdraw from commercial airline service because of a dispute arising out of negotiations for a new contract after the expiration date of this Agreement and/or during and after all procedures of the Railway Labor Act have been exhausted . . . Appendix F.

3. 45 U.S.C. §156 requires that a party desiring to effect a change of rates of pay, rules or working conditions must give to the other party at least thirty (30) days advance written notice.

Association ("ALPA"), initiated sympathy strikes in support of the flight attendant strike. Neither the major nor the minor dispute procedures of the RLA had been exhausted at that time by the flight engineer and pilot unions, both of which were then subject to binding agreements with TIA.

Upon application by the Carrier, and pursuant to 28 U.S.C. §1331, the District Court granted preliminary injunctions against the flight attendants' primary strike of its military operations, and against the sympathy strikes by the pilots and flight engineers against TIA's military operations. Referring to the flight attendants' agreement to continue military operations during strikes against commercial flying, the District Court found:

> The clear import of this provision is to extend the no-strike obligation of the flight attendants beyond the term of the collective-bargaining agreement, even beyond the expiration of the 30-day cooling-off period mandated by the RLA, when the Teamsters would otherwise have the right to strike against all of TIA's operations. The Teamsters do not dispute the meaning of this provision . . . . Appendix A.

Because of the flight attendants' explicit agreement to continue military operations, the District Court enforced the agreement by enjoining the flight attendants' strike against TIA's military operations. That Court also enjoined the flight engineers and pilots from engaging in sympathy strikes against military flying, reasoning that there could not be a legal sympathy strike in support of an illegal primary strike. The District Court refused, however, to enjoin the pilots' and engineers' sympathy strikes of civilian operations. All parties appealed.

The Court of Appeals, Ninth Circuit, found that "the flight attendants' strike . . . violated the military no-strike

clause, and resort to minor dispute arbitration is not necessary to reach this conclusion." Appendix D. That Court further held that "the clause was binding even after exhaustion of those [major dispute] procedures . . ." *Id.*[4] Neverthless, the Court of Appeals erroneously ruled that an injunction to enforce that binding agreement was prohibited by the Norris-LaGuardia Act, 29 U.S.C. §104, because the major dispute procedures of the RLA had been exhausted at the time of the Teamsters' breach of the agreement. The Court of Appeals thus refused to allow equitable enforcement of an agreement they found to be both legally binding and in the national interest.

As for the flight engineer and pilot sympathy strikes, the Court of Appeals held that the picket line and no-strike clauses of the IBT flight engineers' and ALPA pilots' agreements gave rise to "minor disputes" over whether the unions were entitled to engage in sympathy strikes in mid-contract. Because of these ambiguities, the federal courts were found to have jurisdiction to enjoin the sympathy strikes as to both military and commercial operations, pending resolution of the disputes by arbitration. The Court of Appeals recognized the anomaly of its decision, which denies injunctive relief for a clear breach, but grants such relief in an ambiguous case.

TIA now seeks review of the Court of Appeals' denial of injunctive relief to enforce the flight attendant strike limitation agreement, and of the Court of Appeals' ruling that the sympathy strikes should be enjoined only pending clarification of the contract language in arbitration, rather than enjoined completely as mid-term strikes in violation of the RLA.

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4. The Court of Appeals recognized that by the terms of the military agreement, the only time it could be effective was after exhaustion of the Section 6 dispute resolution procedures. Since that agreement had vested, any negotiations directed at changing that agreement or deleting it from the next contract would necessarily refer to the period after exhaustion of the *next* agreement.

REASONS FOR GRANTING THE WRIT

I.

The Court of Appeals Has Erred in Ruling That a Clear Breach of a Binding Railway Labor Act Strike Limitation Agreement May Not Be Enforced by Injunction. The Court of Appeals Has Thereby Decided a Federal Question in a Way Which Conflicts With Applicable Decisions of This Court and of the Court of Appeals, Second Circuit.

A. In the early years of the RLA, this Court declared "[T]he major purpose of Congress in passing the RLA was 'to provide a machinery to prevent strikes.'" *Texas & N.O. R.R. v. Brotherhood of Ry. & S.S. Clerks,* 281 U.S. 548, 569 (1930). More recently the Court said: "[T]he Act's primary objective" is "the prevention of strikes." *Detroit & Toledo Shore Line R.R. v. United Transportation Union,* 396 U.S. 142, 154 (1969).

Considering the breadth and importance of the RLA's strike limitations, the Court of Appeals' narrow construction of them is inappropriate. The latter Court found that the flight attendants' strike violated the military no-strike agreement, and that resort to minor dispute arbitration was not necessary in order to reach that conclusion. Appendix D. The Court of Appeals further held that "as the parties intended, the clause was binding even after exhaustion of those [major dispute] procedures. . . ." *Id.* (Brackets added). Nevertheless, that Court saw no theory upon which to make the strike enjoinable" as a major dispute." *Id.* TIA had contended, however, that the flight attendants' strike was without sufficient claim of legal right to be within *either* the major *or* minor dispute categories and should have been enjoined as a

violation of the Section 2, First, obligation to "maintain" collective agreements during their terms. 45 U.S.C. §152, First. In other words, the flight attendants' unlawful strike of TIA's military operations was not a "minor" dispute because it was not over the meaning or application of the current agreement—the language was too plain for that—and the strike was not a "major" dispute, which would necessarily have involved the language to be used in the *next* military no-strike agreement, if there was to be one. Instead the flight attendants' strike of TIA's military operations was a flagrant breach of a clearly understood and clearly binding agreement, which had fully vested and could not be redrawn during its term through self-help, any more than the carrier could have rewritten the terms of the wage provisions during that same period.

By striking in open disregard of the military flying agreement, the Teamsters ignored what this Court has described as the "heart of the Railway Labor Act", *Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 377-78 (1969), *i.e.*, the duty imposed upon management and labor by Section 2, First, of the RLA, 45 U.S.C. §152, First:

> To *exert every reasonable effort to make and maintain agreements* concerning rates of pay, rules, and working conditions, and to settle all disputes . . . in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof. *Id.* (Emphasis added).[5]

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5. The military no-strike agreements between TIA and each of its bargaining units of flight personnel are essential to TIA's operations, and such agreements by TIA and other carriers and their respective employee groups are of crucial importance to United States military programs worldwide.

(Continued on following page)

This Court has also held that the Section 2, First, obligation of the RLA to make and maintain agreements is enforceable by injunction, even where the formal procedures of the RLA have been exhausted. *Chicago & North Western Ry. Co. v. United Transportation Union*, 402 U.S. 570 (1971). Where a union has not exerted every reasonable effort to make and maintain an agreement, a strike should be enjoined "until the union satisfies the mandate of the Railway Labor Act." *Piedmont Aviation, Inc. v. Air Line Pilots Association*, 416 F.2d 633, 636 (4th Cir. 1969). And a strike injunction should have issued here, where the union's conduct was "a flagrant violation under the Act of the 'duty of all carriers [and] their . . . employees to exert every reasonable effort to make and maintain agreements.' ". *Long Island R.R. v. System Federation*, 368 F.2d 50, 53 (2d Cir. 1966) (ellipses in original).

B. The Court of Appeals' decision also directly conflicts with the holding of the Court of Appeals, Second Circuit, in *Seaboard World Airlines, Inc. v. Transport Workers Union*, 425 F.2d 1086 (2d Cir. 1970), *reaffirmed on further consideration* 443 F.2d 437 (1971). The disputed agreement in *Seaboard* was signed in 1964 and explicitly stated that it would have a "permanent duration" and could not be altered without the written consent of both parties. It provided for a wage reopener on July 1, 1974, ten years after its execution. The unions attempted

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Footnote continued—

In the fiscal year in which the strike arose, TIA was responsible for 78.5% of the total Air Force Logair and Navy Quick-Trans cargo transportation throughout the U.S. domestic military system. Not only are TIA's military cargo operations an integral part of the military supply system within the continental United States, but TIA's operations are also essential to the functioning of the U.S. Military Airlift Command worldwide. Any work stoppage affecting such a substantial amount of air transportation for the U.S. military is a grave matter in terms of national security.

to serve a Section 6 opener in 1969 and struck in support of that opener, contending that the "permanent duration" was illegal or at least did not bar an opener five years after the agreement was entered. The Court of Appeals, Second Circuit, upheld the strike injunction, stating:

> While there may be a question whether reopening another matter is banned only for a reasonable time beyond July 1, 1974 [when the wage opener was permitted] or forever, it is too clear for argument that the agreement forbids a reopener on security matters in 1969 . . . 425 F.2d at 1090-91.

On remand, the district court found Seaboard's permanent agreement legal and "granted Seaboard's request for a permanent injunction to enforce the clause of the agreement which prohibited striking and picketing with respect to the 1964 agreement." *Seaboard World Airlines, Inc. v. Transport Workers Union,* 443 F.2d 437, 438 (2d Cir. 1971). In the second appeal, the Court of Appeals held that under the RLA, parties may "bind themselves against reopening for a period reasonable under the particular circumstances at issue." *Id.* at 439.

In the present case, TIA likewise sought to enjoin a violation of the Section 2, First, duty to maintain agreements. The dissenting Judge in *Trans International Airlines v. International Brotherhood of Teamsters,* 103 L.R.R.M. 2669, 2682, decided correctly that the analogies between these cases rendered *Seaboard* "dispositive":

> In each setting, the relevant contract provision was intended to block the union from pursuing its grievances by means of economic pressure on the employer . . . In each case the union's primary defense was that the contract term was somehow inconsistent with the overall purposes of the RLA and hence inapplicable; Norris-LaGuardia's restriction on injunctive re-

> lief provided the union's fallback position . . . . The Court in *Seaboard* reasoned in part that unions should not be free to strike in violation of contract terms pending resolution of the controversy merely because these terms are so clear as not to require the mandatory arbitration of the Act . . . . Similarly, I can see little practical difference between an injunction enforcing the arbitrator's decision that a strike was forbidden by the contract, despite an underlying major dispute . . . and an injunction in support of a judicial determination that an anti-strike provision is not only clear, but also valid and binding under the Act. 103 L.R.R.M. at 2682-93.

The majority of the Court of Appeals, Ninth Circuit, interpreted the purposes of Section 2, First, of the RLA too narrowly. The RLA is remedial and should be broadly construed to accomplish its purposes. *Texas & N.O. R.R. v. Brotherhood of Ry. & S.S. Clerks,* 281 U.S. 548 (1930); *McMullans v. Kansas, Oklahoma & Gulf Ry.,* 229 F.2d 50 (10th Cir.), *cert. denied,* 351 U.S. 918 (1956). Although the Act prescribes mandatory procedures prior to resorting to any self-help, *Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co.,* 394 U.S. 369, 378 (1969), these statutory procedures merely represent the minimum effort a party must exercise. Even when the major dispute procedures of Sections 5 and 6 have been exhausted, a union can be enjoined from striking if a federal court finds that the union has not made *every reasonable effort* to come to agreement. *Chicago & North Western Ry. Co. v. United Transportation Union,* 402 U.S. 570 (1971) (emphasis added).

Nothing in the statute prohibits the parties either from limiting either the issues over which the parties may strike, *Seaboard World Airlines, supra,* or the weapons at their disposal after these steps are exhausted. For

instance, parties subject to the RLA contract away completely their right to strike in major disputes by agreeing to use binding interest arbitration, instead of self-help when a bargaining impasse occurs. Section 2, First, of the RLA would apply to such an "interest arbitration" agreement. At the time of an arbitrator's decision as to the terms of a new agreement, the no-strike prohibitions of the RLA should attach to the new agreement for its term. Thus, the parties' contractual agreements are enforced by the Section 2, First, requirement that the parties honor those contracts to avoid strikes. Just as the parties may contract away their right to resort to self-help in a major dispute through enforcement of binding "interest" arbitration agreements, they should also be able to agree to a less-than-total, contractual prohibition on self-help, which is enforceable in equity. *See, Southern Pacific Transp. Co. v. Brotherhood of Ry., Airline & S.S. Clerks,* 81 L.C. ¶13,113 (N.D. Cal. 1975) (not officially reported). Indeed, such contractual limits are entirely consistent with the public interest and with the overall legislative intent of the RLA to minimize interruptions of interstate commerce by limiting or eliminating strikes. *Detroit & Toledo Shore Line R.R. v. United Transportation Union,* 396 U.S. 142, 148 (1969).

While parties are generally free to use any legal economic weapons at their disposal after exhausting the major dispute procedures, *Brotherhood of Locomotive Engineers v. Baltimore & Ohio Railroad,* 372 U.S. 284, 291 (1963), they can be prohibited from using self-help where this would conflict with federal law. *Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co.,* 394 U.S. 369, 392 (1969). As in *Seaboard,* the Union's use of economic power here directly conflicts with its Section 2, First, obligation under the RLA. And the terms of the agreement are plain. The parties agreed to limit strikes for

their mutual self-interests. TIA had military contracts which would benefit the employees with wages, the employer with revenues, and both parties with continued military business. The parties, in effect, agreed that limited warfare was preferable to global, nuclear warfare.

A railway case, *Southern Pacific Transp. Co. v. Brotherhood of Ry. Airline & S.S. Clerks,* 81 L.C. ¶13,113 (N.D. Cal. 1975) (not officially reported), provides a further analogy. There, the district court enjoined a strike in violation of a union's no-strike commitment on the dual bases that the legality of the strike was "an arbitrable minor dispute," 81 L.C. at ¶24,384, and that the strike violated the Section 2, First, "duty to exert every reasonable effort to 'maintain agreements'." 81 L.C. at ¶24,385.

With respect to the Section 2, First, violation, the district court held:

> This court has jurisdiction to enjoin a strike if it violates defendants' duty to exert every reasonable effort to maintain agreements. (45 U.S.C. 152, First). Such an injunction, to compel compliance with the Railway Labor Act, is not prohibited by the Norris-LaGuardia Act and must issue even though the strike involves an admitted major dispute. *Chicago & Northwestern Ry. Co. v. United Transportation Union,* 402 U.S. 570 (1971).
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> * * *
>
> Assuming a solely major dispute characterization, this court would then have the duty to determine whether or not the strike violates defendants' duty, under Section 2, First of the Act, to 'maintain agreements.' Based upon all the evidence, it appears that a strike over the work rules demands is prohibited by the moratorium in Article XI, Section 3(e) of the national

> agreement and accordingly violates defendants' statutory duty to 'maintain agreements.' *The strike should be enjoined to compel defendants to comply with their statutory duty by honoring and 'maintaining' their no-strike commitment in the 1975 national agreement.* 81 L.C. at ¶24,385 (emphasis added).

In view of the legislative history of the RLA and the pertinent judicial constructions of Section 2, First, the Court of Appeals in the present case erroneously concluded that the Teamsters' strike of TIA's military operations, while unlawful, was not enjoinable. The Teamster flight attendants had bound themselves by contract and, consequently, by operation of law—the RLA—not to strike TIA's military operations during the life of their military no-strike agreement, even after expiration of their basic agreement. The military no-strike commitment is a collective bargaining agreement, which, by its express terms, remains in force and prohibits any flight attendant work stoppage directed at military operations. The Teamster efforts to disregard their military no-strike commitment directly violates their Section 2, First statutory duty to make and *maintain* agreements.

II.

The Court of Appeals Refused to Recognize the Statutory Limitations on Sympathy Strikes Under the Railway Labor Act. This Raises an Important Question of Federal Law Which Has Not Been, but Should Be, Settled by This Court.

This Court should review the issue of whether sympathy strikes are prohibited by the RLA. Failure to resolve this important issue threatens to undermine the Act's effectiveness, to disrupt interstate commerce, and to jeopardize important legal rights of thousands of rail

and air carriers and employees. The issue arises repeatedly, but because of the limited duration of many strikes, tends to escape review.

Judicial condonation of sympathy strikes would create a new and powerful weapon for a small group of organized employees involved in a dispute with a carrier, giving them the ability to initiate major disruptions to transportation, and to extend the effective disruptive power of larger groups of employees to periods beyond those contemplated by Congress in enacting the RLA. As Appendix G illustrates, each airline deals with a number of different unions representing as many as twenty-five different groups of employees. A primary strike is always disruptive, but the degree of disruption depends on the number and type of employees involved. For example, on American Airlines, just thirty-nine meteorologists represented by the Transport Workers Union ("TWU") could cause a complete shutdown of the carrier's activity by inducing a sympathy strike among the eight other represented employee groups, even though the carrier had binding agreements with representatives of those other groups.

The same disruptive power would be given to the eleven Nurses and fourteen Technical Instructors represented by the Teamsters on Eastern Airlines; the thirteen Hostess Fashion Shop Employees represented by the International Association of Machinists ("IAM") on Braniff; the seventy-one Anchorage, Alaska Flight Kitchen Employees represented by the IAM on Northwest Airlines; and even to the ten Flight Specialists/Balloon Watchers represented by the International Brotherhood of Electrical Workers ("IBEW") on Pan American. In each of these examples, a small group of employees is covered by a separate labor agreement, even though the same union may also represent thousands of other employees in major

classifications on the same carrier. Such a result sanctions the spread of strikes, which increases dramatically the number of employees involved, and their economic effect, contrary to the expressed RLA purpose of minimizing strikes.

The RLA sets forth a comprehensive scheme to curtail drastically the situations in which strikes, and interruptions to commerce caused thereby, may legally occur. Strikes over grievances arising out of disputes over interpretation of existing agreements - "minor disputes" in RLA parlance - are totally prohibited. The Act compels arbitration and any strike is therefore enjoinable as a violation of the Act. *Brotherhood of R.R. Trainmen v. Chicago River & Indiana R.R.*, 353 U.S. 30 (1957). Strikes over demands for higher wages and additional rights in new or renewal contracts - "major disputes" in RLA parlance - are prohibited until the parties have completed the multistep procedures required by Section 6 of the RLA, 45 U.S.C. §156. *Chicago & North Western Ry. Co. v. United Transportation Union*, 402 U.S. 570 (1971). These procedures are designed to require extended bargaining, frequently far beyond the stated termination date of the contract, in an effort to increase the chances of an agreement without a strike. *Detroit & Toledo Shore Line R.R. v. United Transportation Union*, 396 U.S. 142 (1969); *Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969). A major dispute strike prior to exhausting the Section 6 procedures will be enjoined by the federal courts. *O'Donnell v. Wien Air Alaska, Inc.*, 551 F.2d 1141 (9th Cir. 1977); *Ruby v. TACA International Airlines*, 439 F.2d 1359 (5th Cir. 1971).

The principal mistake of the courts below stems from their failure to recognize the extent of the differences between the RLA and the NLRA. The NLRA specifically provides that:

> Nothing in [the NLRA], except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike . . . 29 U.S.C. §163 (Right to strike preserved).

Strikes over the meaning of agreements are lawful unless the parties have contracted not to strike; similarly arbitration is not mandatory unless the parties contract to make it so.

The RLA, on the contrary, contains no right-to-strike provision; in fact, this Court has long held that

> the major purpose of Congress in passing the Railway Labor Act was 'to provide a machinery to prevent strikes.' *Detroit & Toledo Shore Line R.R., supra, quoting Texas & New Orleans R.R. v. BRC,* 281 U.S. 548, 565 (1930).

Under the RLA, disputes over the meaning or application of agreements (so-called "minor disputes") must be submitted to binding arbitration, and strikes over such disputes are prohibited by the RLA. Moreover, strikes over the terms of a new agreement are also prohibited by the RLA, even after expiration of the contract, until the carrier and union have exhausted the dispute resolution processes of the Act.

The fundamental difference between the two Acts, regarding their basic attitude toward strikes and their different relationships to the Norris-LaGuardia Act, is reflected in this Court's historically dissimilar treatment of strike injunction cases arising under the two Acts. Much of the confusion stems from the lower courts' misapplication of *Buffalo Forge Co. v. United Steelworkers,* 423 U.S. 397 (1976), an NLRA case. The structure of the

RLA and the entirely different evolution of strike injunctions under the RLA demonstrate the inapplicability of *Buffalo Forge* to RLA cases.

The landmark RLA case in the area is *Brotherhood of R.R. Trainmen v. Chicago River & Indiana R.R.*, 353 U.S. 30 (1957). In *Chicago River*, the Court was faced with the question of whether a district court could enjoin a strike over a minor dispute. A unanimous Court held that

> the District Court has jurisdiction and power to issue necessary injunctive orders [to enforce compliance with the requirements of the Railway Labor Act] notwithstanding the provisions of the Norris-LaGuardia Act.

Id. at 42 (brackets in original), *quoting Brotherhood of R.R. Trainmen v. Howard*, 343 U.S. 768, 774 (1952). In holding that a union could be enjoined from striking over a dispute justiciable by an adjustment board, the Court looked to legislative history to determine that the purposes of the RLA should not be impaired by the earlier and more general Norris-LaGuardia Act. The Court also stated that:

> The relationship of labor and management in the railroad industry has developed on a pattern different from other industries. The fundamental premises and principles of the Railway Labor Act are not the same as those which form the basis of the National Labor Relations Act . . . . 353 U.S. at 31, n. 2.

In 1962, the Court considered the principal issue of *Chicago River*—that is, whether a federal district court could preserve an arbitrator's jurisdiction over an arbitrable dispute by using its injunctive powers—in a dispute arising under the NLRA. The Court held that, when such a dis-

pute arose under the NLRA rather than the RLA, the Norris-LaGuardia Act would destroy federal injunctive jurisdiction. The Court explicitly distinguished its decision from *Chicago River*, on the ground that *Chicago River*

> expressly recognized and rested . . . upon the differences between provisions for the settlement of disputes under the Railway Labor Act and the Taft-Hartley Act.

Sinclair Refining Co. v. Atkinson, 370 U.S. 195, 211, n. 30 (1962), *overruled by, Boys Markets, Inc. v. Retail Clerks' Union*, 398 U.S. 235 (1970).

Although these two lines of cases lost their diametrical opposition in 1970, when *Sinclair Refining* was overruled by *Boys Markets, supra*, the distinction between them remained intact. The holding in *Boys Markets* was "a narrow one", 398 U.S. at 253, and is severely constrained in a number of ways that the holding in *Chicago River* was not. 398 U.S. at 254. *Cf. Seaboard World Airlines v. Transportation Workers Union*, 425 F.2d 1086, 1092 (2d Cir. 1970), *reaff'd on further consideration* 443 F.2d 437 (1971); *Piedmont Aviation, Inc. v. Air Line Pilots Association, Inter.*, 416 F.2d 633, 638 (4th Cir. 1969) (several traditional pre-conditions to equitable relief will be less stringently scrutinized in a RLA case).

When the Court decided *Buffalo Forge* in 1976 (a 5-4 decision), it announced a limitation of its holding in *Boys Markets*. It did *not* announce, imply, or even consider a limitation on the RLA injunctions that the unanimous Court approved in *Chicago River*.

Buffalo Forge thus, by its own terms, does not apply to a situation when the threat to public policy posed by a sympathy strike involves more than a breach of private

contract. A strike by RLA employees is just such a situation. The motivating force of the Act is the public interest in preventing disruption of air and rail service. This interest is served both by the direct operation of the statute and by the statutory imprimatur afforded to collective bargaining under the Act. *International Association of Machinists v. Central Airlines,* 372 U.S. 682, 683 (1963).

Buffalo Forge limited the applicability of the Norris-LaGuardia exception created in *Boys Markets* to situations where the *underlying* dispute was subject to arbitration. It did not limit injunctions under the RLA, because injunctions under the RLA were not created by *Boys Markets.* Injunctions under the RLA are founded on the statute itself. *See* 398 U.S. at 251-52.

Under the RLA a party must maintain the status quo until given the right to change it through agreement or after exhaustion of major dispute procedures, when the parties are released to self-help. If the employees assert a right to do something different—whether to work in a different job, to come to work at a different time, to eat their lunch an hour later, or to withhold their services in support of another union—they must establish their right to change their working conditions in a system board arbitration (or in contract negotiations) *before* they effect the change. Neither the carrier nor the employees can unilaterally impose a change on the other party.

In this case the unions made no pretext of having attempted to exhaust any of the dispute resolution procedures required under the Act. They simply walked off the job. The labor strife attendant on their unilateral action, and the resulting disruption of air travel to the public, are exactly what the RLA was designed to prevent. *Detroit & Toledo Shore Line R.R. v. United Transportation Union,* 396 U.S. 142 (1969).

TIA acknowledges that if unions are in fact required to exhaust Section 6 procedures before altering their own working conditions, this effectively means that sympathy strikes by other employee groups against their common employer are not permissible under the RLA, at least absent contractual waiver by the employer. But TIA believes this is in accord with the express RLA policy "to settle all disputes" before the "purposefully long and drawn-out" Section 6 procedures are exhausted. 45 U.S.C. 152, First; *Detroit & Toledo Shore Line R.R. v. United Transportation Union,* 396 U.S. 142 (1969); *Brotherhood of Ry. & Steamship Clerks v. Florida East Coast Ry.,* 384 U.S. 238, 246 (1966).

This conclusion is inescapable in light of the essential Congressional purpose of the RLA to prevent interruptions of transportation. Employees are entirely prevented from striking over grievances or economic demands until they have participated in purposefully drawn out conferences, negotiations, mediation and possibly arbitration, all designed to lead to an agreement which will prevent interruption of commerce. It is inconceivable, therefore, that these same employees could nevertheless immediately strike, in violation of the no-strike provisions of their agreement, simply because they have "sympathy" for the economic demands of other employees. Such a conclusion is contrary to the basic purpose of the RLA to minimize all strikes and disruptions of transportation. *Brotherhood of R.R. Trainmen v. Chicago River & Indiana R.R.,* 353 U.S. 30 (1957). Moreover, it would enable a very small group of organized employees involved in a dispute with the carrier to initiate major, disastrous disruptions to interstate commerce for indefinite periods of time. This result is totally incongruous with the clear intent of the RLA.

To the extent that the unions claim that the contractual picket line clauses waive this statutory prohibition and that those clauses must be construed and applied by System Board arbitration, the no-strike injunction should, nevertheless have been granted. Although to a certain extent this prejudges the issue, the difference in statutory schemes justifies this different result. Under the NLRA and *Buffalo Forge,* the union has a statutory right to strike until the arbitrator decides it has been waived. The Court must honor the statutory scheme and not prejudge the contractual dispute. Under RLA, on the contrary, the unions have no statutory right to strike except to the extent the employer legally may waive and has by contract waived the statutory prohibition of strikes.

The unions contend that sympathy strikes are a gigantic loophole in the RLA's policy of prohibiting all mid-contract strikes. They claim that while engineers and pilots may not strike during their respective contracts for their own grievances or for additional contract rights, the engineers and pilots may strike any time they wish to support grievance or contract claims of others. In view of the RLA's emphasis on strike prevention and avoidance, such an anomalous exception to the statutory scheme should not be inferred.

We respectfully submit that this case warrants review by this Court.

CONCLUSION

For the foregoing reasons, a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF CALIFORNIA

No. C-77-2010 RFP

TRANS INTERNATIONAL AIRLINES, INC.,
Plaintiff,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA, AIRLINE DIVISION: TEAMSTERS LOCAL 2707, AIRLINE, AEROSPACE AND ALLIED EMPLOYEES, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA, et al.,
Defendants.

MEMORANDUM AND ORDER RE FLIGHT ATTENDANTS

The plaintiff, Trans International Airlines, Inc. (TIA) is a large supplemental air carrier which transports both military and civilian passengers, as well as cargo. The present TIA is the result of the merger of TIA and another supplemental carrier, Saturn Airways, Inc. (Saturn), on November 30, 1976. At present, all of the flight attendants employed by TIA are represented by the defendant International Brotherhood of Teamsters (Teamsters)

under a collective-bargaining agreement effective July 21, 1974. In February, 1976, the Teamsters served a notice of intent to amend the agreement under the terms of section 6 of the Railway Labor Act (RLA), and negotiations began. The agreement expired by its terms on April 1, 1976, but continued in effect while the parties exhausted the major dispute procedures of section 6 of the RLA. The National Mediation Board assigned a mediator to the dispute on August 19, 1976. Almost one year later, in August, 1977, voluntary arbitration of the dispute was refused by the Teamsters, the mediator withdrew, and the 30-day cooling-off period began. The cooling-off period expired at midnight, September 7, 1977, exhausting the procedures of the RLA and, in the normal course, leaving the parties free to resort to self-help. However, TIA applied to this court on September 7 for a temporary restraining order in order to avert a strike scheduled to begin at midnight that night. This court issued such an order restraining all TIA flight attendants from striking, but the next day substantially modified that order so that it applied only to those flight attendants assigned to work on purely military flights. TIA now moves for a preliminary injunction against all striking flight attendants, and raises the same three issues as it did when seeking a temporary restraining order.

TIA's first contention is that a strike by the flight attendants would violate the requirements of a Civil Aeronautics Board order, CAB Order 76-5-60 (May 14, 1976), which imposed a set of labor protective provisions (LPP's) as a condition to approving the Saturn-TIA merger. LPP's are required by the CAB for the purpose of ensuring a smooth integration of the collective bargaining agreements of the merging corporations. For present purposes, the importance of the LPP's lies in their requirement

that disputes concerning the rearrangement of employees upon merger, including disputes as to the seniority rights of the merged employees, must be submitted to binding arbitration. TIA asserts that since some seniority issues arising out of the merger have not yet been resolved, under the terms of the LPP's these issues must be submitted to arbitration; and consequently the Teamsters have no right to strike over them. The problem with this argument is that this strike has almost nothing to do with merger-related issues. Rather, the primary area of disagreement between TIA and the Teamsters is with regard to the economic issues—wages, hours, and the like. These issues are regulated exclusively by the RLA, and the LPP's of the CAB order cannot apply to these issues which are wholly separate from the merger. It would be unreasonable to hold that just because some of the open issues in the negotiations for a new contract are merger-related, the union has waived its right to strike over any issue even though the mandatory procedures of the RLA have been completed. The purpose of the LPP's is merely to help ease the integration of two labor forces following a merger. Nothing in this purpose requires such a drastic curtailment of rights under the RLA.

TIA's second contention is that the Teamsters are not free to strike because they have not complied with the requirements of Section 2 First of the RLA, which requires all carriers and employees "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions . . ." This argument is based upon the Supreme Court's decision in *Chicago & N.W. Ry. Co.* v. *United Transportation Union*, 402 U.S. 570 (1971). That case held that Section 2 First is more than just a statement of policy, rather it imposes a judicially enforceable obligation to do more than just go through the motions of complying with the mandatory

procedures of the RLA with no intention of reaching an agreement. TIA has introduced a substantial amount of evidence, including several affidavits, in its attempt to show that the Teamsters had no intention of reaching an agreement and were merely "going through the motions" in order to be free to initiate a strike against TIA. This evidence boils down to two major factual points. First, although the Teamsters originally proposed only 61 changes in the agreement in early 1976, in March of 1977 the Teamsters presented an entirely new proposal containing over 200 proposed changes. TIA argues that this increase in the outstanding issues is strongly indicative that the Teamsters were not exerting a "reasonable effort to make . . . agreements." However, it is undisputed that for several months in late 1976, there was little active negotiation taking place between the parties because of the difficulties and uncertainties of consummating the proposed Saturn-TIA merger. In fact, negotiations did not get underway again in earnest until approximately the time the Teamsters introduced their new proposal. The testimony heard by the court on this matter indicates that what the Teamsters were trying to do with the introduction of their March, 1977, proposal was to integrate the old Saturn and old TIA agreements, taking the best from both. Since the carriers were newly merged and the Teamsters were now representing a larger group of flight attendants, it hardly seems unreasonable for them to modify their previous proposal substantially to meet the new conditions.

Second, TIA accuses the Teamsters of bad faith in that the union has refused over the course of 18 months of bargaining to bring their economic demands down to reasonable levels. As TIA calculates it, the Teamster proposal that was on the table at the beginning of September, 1977, demanded wages, benefits, and working conditions

that would cost TIA $12,600,000, or 294% of its present flight attendants' payroll (based on figures reported on IRS form W-2). TIA argues that this represents approximately three times TIA's total profits for fiscal year 1976, indicating almost *per se* that the Teamsters have not made a reasonable effort to reach an agreement. The union disputes these figures, particularly the estimated 294% cost increase of its proposal, but the court finds it unnecessary to the resolution of this question to determine the actual figures.

TIA is effectively asking the court to hold that the sheer size of the Teamsters' economic demands, and the distance between the parties after a long period of negotiations, amounts to a lack of reasonable effort by the union to reach an agreement. The court can find no previous decision under the RLA, nor can TIA suggest one, which has inferred lack of reasonable effort solely from the size of the proposals put forth by the parties. Similarly, there does not appear to be any such decision under the roughly comparable "bad faith bargaining" standard of the National Labor Relations Act. Indeed, such a conclusion would seem to be precisely what the Supreme Court warned against in its *Chicago & N.W. Ry.* decision:

> [G]reat circumspection should be used in going beyond cases involving "desire not to reach an agreement," for doing so risks infringement of the strong federal labor policy against governmental interference with the substantive terms of collective-bargaining agreements.

402 U.S. at 579, n.11.

Furthermore, it appears that the negotiations between the parties have resulted in agreement in many significant areas, and there have been reductions in the Teamsters

economic proposals. It is uncontested that, of the over 200 proposals the Teamsters put forth in March, 1977, only 85 open items remained as of September 7, 1977. Additionally, the Teamsters have reduced their economic demands on at least two occasions by fairly significant amounts. TIA itself has put forth only one complete proposal during the entire course of the negotiations. Under these circumstances, it is not unreasonable behavior for the Teamsters to refuse to unilaterally reduce their demands. It is clear to the court that both parties have been obstinate and unyielding in these negotiations. However, their behavior is much better characterized as simply hard bargaining rather than a conscious attempt by either side to avoid reaching an agreement. As the Southern District of New York concluded in a decision closely examining the cases in this area, "a party does not violate its duty under the [Railway Labor] Act if it chooses to be adamant in its position." *REA Express, Inc.* v. *Brotherhood of Railway Clerks*, 358 F. Supp. 760, 772 n.43 (S.D. N.Y. 1971) (citing cases both prior to and after *Chicago & N.W. Ry.*).

TIA's final contention relates only to its military flights. The July 21, 1974 collective-bargaining agreement between the parties specifically provides as part of the No Strike-No Lockout provisions that:

> The Union further agrees that the Flight Attendants will continue to perform all duties which are necessary to enable the Company to operate flights for or in support of traffic sponsored by the Department of Defense of the United States of America, even though Flight Attendants withdraw from commercial airline service because of a dispute arising out of negotiations for a new contract after the expiration date of this Agreement and/or during and after all procedures

> of the Railway Labor Act have been exhausted. . . . [Art. XII, Sec. D.]

The clear import of this provision is to extend the no-strike obligation of the flight attendants beyond the term of the collective-bargaining agreement, even beyond the expiration of the 30-day cooling-off period mandated by the RLA, when the Teamsters would otherwise have the right to strike against all of TIA's operations. The Teamsters do not dispute the meaning of this provision, but argue that it is no longer in effect. During the negotiations, the Teamsters requested modification of the language of this clause. They argue that this provision, along with every other issue on which no agreement has been reached, has thus been "processed through" the procedures of the RLA and is no longer of any effect once the cooling-off period has ended. This argument might be correct with respect to the other clauses in the 1974 collective-bargaining agreement that are being renegotiated, but it totally ignores the specific language of this provision. This military no-strike clause could not be clearer in expressing its intent that the flight attendants thereby give up their right to strike TIA's military flights even during those periods when they might strike all of TIA's other operations. This clearly expressed intent must prevail over any general rule that contract language which is being renegotiated is no longer effective following the 30-day cooling-off period.

Accordingly, it is hereby ORDERED that the defendant International Brotherhood of Teamsters, their officers, agents, representatives, members, servants, employees, and any and all persons acting in concert or participation with them, are hereby restrained from authorizing, inducing, causing participation in, or otherwise aiding and abetting in any concerted refusal to work and/or work stoppage

by any TIA flight attendant assigned to work on any flight for or in support of traffic sponsored by the Department of Defense. In all other respects, the plaintiff's motion for a preliminary injunction with respect to TIA's flight attendants is denied.

It has come to the attention of the court that some TIA flight attendants working on military flights pursuant to the Temporary Restraining Order issued by this court on September 8, 1977, may have been stranded by TIA in cities away from their homes. Such treatment of TIA flight attendants violates in several respects the provisions of the parties' July 21, 1974, collective-bargaining agreement. These alleged actions on the part of TIA greatly concern the court, and would be considered by the court to be an abuse of TIA's contractual right to keep military flights operating during a flight attendants' strike if proven. The strandings are alleged to be designed to coerce individual flight attendants to break their legal strike against TIA's commercial flights. Therefore, counsel for TIA and the Teamsters are requested to draft and submit to the court as soon as possible an order restraining TIA from stranding any flight attendants away from their home base in connection with the operation of any military flights during the remainder of this strike.

IT IS SO ORDERED.

Dated: September 26, 1977

/s/ Robert F. Peckham
United States District Judge

APPENDIX B

IN THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

No. C-77-2011 RFP

TRANS INTERNATIONAL AIRLINES, INC.,
Plaintiff,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, etc., AIRLINE DIVISION; TEAMSTER LOCAL 2707; MARVIN G. GRISWOLD; TEAMSTER LOCAL 732; AIRLINE PILOTS ASSOCIATION, INTERNATIONAL,
Defendants.

MEMORANDUM AND ORDER RE FLIGHT ENGINEERS AND PILOTS

This case raises the issue of this court's power to enjoin sympathy strikes under the Railway Labor Act (RLA). The plaintiff, Trans International Airlines, Inc. (TIA), is a supplemental air carrier, and is the surviving corporation of the merger of Saturn Airways, Inc. (Saturn) and TIA on November 30, 1976. All of the flight engineers presently employed by TIA are represented by defendant International Brotherhood of Teamsters (Teamsters), but under two different collective-bargaining agreements. Those flight engineers, as well as pilots and navigators, who were employed by TIA before the merger are governed by an agreement that went into effect July 21, 1974, while flight engineers formerly employed by Saturn came under an agreement effective November 17, 1974.

TIA's pilots are similarly divided. The pre-merger TIA pilots were represented by the Teamsters and they still work under the July 21, 1974, contract. The former Saturn pilots, on the other hand, were represented by the Airline Pilots Association (ALPA), and they are governed by an agreement effective May 23, 1972. Since the merger, all of TIA's pilots have been represented by ALPA. All three of these collective-bargaining agreements are still in force, although they have been subsquently modified by letter agreements not relevant to this dispute.

The issues to be decided in this case involve the attempts by both groups of flight attendants and both groups of pilots to engage in a sympathy strike in support of a primary strike by TIA's flight attendants that commenced on September 9, 1977. The facts surrounding that labor dispute are fully set out in the court's memorandum and order of September 26, 1977, case No. C-77-2010 RFP. Prior to the commencement of the strike, on September 7, 1977, this court issued a temporary restraining order prohibiting all flight engineers from refusing to cross any picket lines. The next day, September 8, that order was substantially modified to restrain only former Saturn flight engineers and flight engineers working on TIA's military flights from honoring any picket lines. After listening to further argument on this matter at a hearing held on September 15, 1977, the court must now decide whether a preliminary injunction should issue. At the same time, the court also has before it TIA's application for a temporary restraining order to halt a sympathy strike by TIA pilots.

Whether or not these four groups of TIA employees have the right to engage in a sympathy strike must be determined by the terms of the applicable collective-bargaining agreement. The three agreements contain a vari-

ety of relevant language—general no-strike pledges, picket line clauses, and military no-strike provisions.[1] All parties agree that any dispute over the proper construction of these clauses is a "minor dispute" under the RLA, which either the employer or the union may take to binding arbitration. RLA Section 3, First, 45 U.S.C. § 153, First. The Teamsters and ALPA argue that their members have the right to honor the flight attendants' picket lines under the terms of the three applicable collective-bargain-

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1. PRE-MERGER TIA FLIGHT ENGINEERS AND PILOTS

(Agreement of July 21, 1974)

"SECTION 21

A. [General No Strike Clause] During the term of this Agreement, the Union shall not authorize, cause, sanction or engage in any strike, picketing, slowdown or stoppage of work.

. . .

D. [Military No Strike Clause] The Union further agrees that the Crewmembers will continue to perform all duties which are necessary to enable the Company to operate flights for or in support of traffic sponsored by the Department of Defense of the United States of America, even though such Crewmembers withdraw from commercial airline service because of a dispute arising out of negotiations for a new contract after the expiration date of this Agreement and/or during and after all procedures of the Railway Labor Act have been exhausted, . . .

E. [Picket Line Clause] It shall not be a violation of this Agreement, and it shall not be a cause for discharge or disciplinary action in the event a Crewmember refuses to go through or work behind a legal primary picket line maintained by the Union in connection with a dispute between the Company and the Union involving any flight personnel represented by the Union."

FORMER SATURN FLIGHT ENGINEERS

(Agreement of November 17, 1974)

"Section 24

. . .

L. [General No Strike Clause] The Company will not lock out any employees covered by this Agreement and the Union and its members, individually and collectively, agree that they will not authorize or take part in any strike or picketing at the Company's premises during the life of this Agreement, until the

(Continued on following page)

ing agreements. As to all three agreements, TIA disagrees with the unions' reading of the agreements, and wishes to take the dispute to arbitration. Central to TIA's claim for relief is its assertion that the Supreme Court's decision in *Brotherhood of Railroad Trainmen* v. *Chicago River & I.R. Co.*, 353 U.S. 30 (1957), requires this court to enjoin any actions by the unions which would alter the status quo pending arbitration of this minor dispute. A brief look at the historical development of this area of labor law is necessary to determine the correctness of TIA's assertion.

The *Chicago River* decision, *supra*, created an exception to the general command of section 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104, that federal courts should

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Footnote continued—

procedures for settling disputes involving employees covered by this Agreement, as provided for by the Railway Labor Act, have been exhausted by both parties.

. . .

P. [Military No Strike Clause] Conduct of Military Operations—It is mutually agreed that during the term of the Agreement between the Company and its Flight Engineers as represented by the Union, that the Flight Engineers will not engage in any strike or work stoppage on purely military operations conducted by the Company."

FORMER SATURN PILOTS

(Agreement of May 23, 1972)

This contract contains no general no-strike agreement as such, although it does, in Section 26 C 12, reserve to each party all the rights and privileges accorded under the provisions of the Railway Labor Act.

"Section 29

. . .

K. [Military No Strike Clause] In the interest of national defense and in the event of the withdrawal from service from Saturn Airways, Inc., of crew members covered by this agreement, essential military services shall be permitted to operate; provided however, that this policy shall only pertain to those flights that are solely and completely military in nature and whose entire cargo is comprised of military commodities or military personnel."

not issue injunctions in labor disputes. The Court held there that an injunction could issue to prevent a strike while minor disputes were arbitrated as required by the RLA. The minor disputes in that case were 21 individual grievances; claims for additional compensation or for reinstatement. The Court's reasoning was that it was the intent of Congress to bring about stability in the labor relations of "this most important national industry," where a strike meant disruption and economic injury to a great many people. Therefore, Congress saw fit to ban outright strikes within the industry over individual grievances. Although the Court spoke in general terms, using the statutory phrase "minor disputes," it is evident that the Court was primarily concerned with preventing strikes over everyday grievances.[2] In the years since this decision, however, the rule of *Chicago River* has been applied very broadly. Federal courts have routinely issued injunctions against any strike action, including sympathy strikes, where any minor dispute has been found to exist. *Hughes Air Corp.* v. *Airline Pilots Assoc.*, No. 71-3034 (9th Cir., Jan. 7, 1972); *Northwest Airlines, Inc.* v. *Airline Pilots Assoc.*, 442 F.2d 246 (8th Cir. 1970), *reaffirmed* 442 F.2d 251 (1971), *cert. denied*, 404 U.S. 871 (1971).[3]

The analogous situation under the National Labor Relations Act, on the other hand, was originally resolved the opposite way. *Sinclair Refining Co.* v. *Atkinson*, 370

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2. This can be most clearly seen in the court's characterization of minor disputes as "controversies over the meaning of an existing collective-bargaining agreement in a particular fact situation, generally involving only one employee." 353 U.S. at 33.

3. In 1974, this court issued a temporary restraining order in a sympathy strike situation similar to the one in this case and involving some of the same parties. Saturn Airways, Inc. v. International Brotherhood of Teamsters, Civ. No. C-14-1305 RHS (N.D. Cal. 1974). This decision, like those cited in the text, was pre-*Buffalo Forge* and is distinguishable for the reasons set forth in this memorandum.

U.S. 195 (1962), held that a strike over an issue the parties expressly agreed to arbitrate could not be enjoined because of the prohibition of section 4 of the Norris-LaGuardia Act. However the Court in *Boys Markets, Inc.* v. *Retail Clerks Union*, 398 U.S. 235 (1970), overruled *Sinclair Refining* and stated in broad language that a no-strike clause could be enforced by a federal court injunction pending arbitration under a broad arbitration clause. *Boys Markets*, like *Chicago River* before it, was thereafter applied automatically by most federal courts. If a broad arbitration clause was accompanied by a no-strike pledge and the dispute was arguably arbitrable, an injunction would almost invariably issue, even against sympathy strikes. *NAPA Pittsburgh, Inc.* v. *Automotive Chauffeurs*, 502 F.2d 321 (3d Cir. 1974) (en banc); *Island Creek Coal Co.* v. *Mine Workers*, 507 F.2d 650 (3d Cir. 1975); *Armco Steel Corp.* v. *Mine Workers*, 505 F.2d 1129 (4th Cir. 1974); *Valmac Industries* v. *Food Handlers*, 519 F.2d 263 (8th Cir. 1975), *vacated* 428 U.S. 906 (1976). *Contra, Amstar Corp.* v. *Meat Cutters*, 468 F.2d 1372 (5th Cir. 1972).

This mechanical approach was recently rejected outright by the Supreme Court in *Buffalo Forge, Inc.* v. *Steelworkers*, 428 U.S. 397 (1976). *Buffalo Forge* explained that *Boys Markets* established only a narrow exception to the general prohibition of the Norris-LaGuardia Act. In the case of sympathy strikes, where the underlying issue (the primary strike) is not arbitrable, the Court held that Norris-LaGuardia still prohibits the issuance of an injunction to halt the strike. There are compelling reasons for reaching this result. If the employer can obtain an injunction just by raising an arbitrable issue of contract interpretation, then sympathy strikes could be enjoined in every case pending arbitration. It is almost always possible to dispute in good faith the meaning of even

the clearest contract language intended to give a union the right to honor another's picket lines. A union's hard won contractual right to engage in sympathy strikes would be lost for that critical period at the beginning of the primary strike when support for the strike from other unions is generally most crucial. The core meaning of *Buffalo Forge* then, is that sympathy strikes present a different situation than strikes over grievances concerning the terms and conditions of employment and that the logic of *Boys Markets* is thus not applicable to the sympathy strike situation. Rather, a fresh analysis of the situation is required.

The court can discern no reason why this teaching of *Buffalo Forge* should not be equally applicable to the RLA and the *Chicago River* decision. Although there are fundamental differences between the RLA and the NLRA, and only rough analogies may be drawn between the two statutory schemes, nevertheless the core reasons for reaching the *Buffalo Forge* result are just as compelling the the RLA context as under the NLRA. This case presents a situation greatly resembling that in *Buffalo Forge*. In fact, the former Saturn flight engineers and pilots are identically situated with the union members in *Buffalo Forge*. These employees have a no-strike pledge in their agreement, but contend that this does not prevent them from honoring the flight attendants' picket lines. The pre-merger TIA flight engineers and pilots, on the other hand, present an even more compelling case for reaching the *Buffalo Forge* result, for their contract contains an express provision permitting the honoring of picket lines. If TIA can obtain an injunction against a sympathy strike here by simply disputing the interpretation of the picket line clause, these employees will have effectively lost the benefit of this bargained-for contract provision.

The result reached here does not conflict with the policies underlying the RLA and the *Chicago River* decision. The RLA provides for the mandatory arbitration of minor disputes, and *Chicago River* permits an injunction pending their arbitration, in order to minimize interruptions in the operation of the vital industries covered by the RLA. However, the RLA does permit strikes in "major disputes," disputes stemming from the bargaining over a new contract. The primary strike by the flight attendants which underlies this case is just such a permitted strike, for the RLA's prerequisites to striking have all been completed. Commerce is already being disrupted and TIA already has a strike on its hands with the full blessing of the RLA. A sympathy strike possibly may enhance the effectiveness or the extent of the work stoppage, but there is by definition already an underlying primary strike. Disagreement over a union's right to honor picket lines is a minor dispute within the RLA definition. But a sympathy strike situation under the RLA will always be associated with a related major dispute, and it has elements in common with the major dispute that clearly distinguish a sympathy strike from other types of minor disputes. The court thus finds the rationale of *Chicago River* to be inapplicable here in light of the teaching of *Buffalo Forge* and the compelling reasons for following that decision outlined above.

In one important respect, however, the facts of this case significantly differ from those in *Buffalo Forge*. All three collective-bargaining agreements before the court contain a special military no-strike clause in addition to any general no-strike pledge. Both the agreements for the pre-merger TIA flight engineers and pilots, and for the former Saturn pilots clearly state that military flights are to be continued even if the union lawfully strikes

all other flights. These special provisions are required by the terms of the Department of Defense contracts with TIA in order to assure continued service for the military. It would be going well beyond the facts of *Buffalo Forge* for this court to hold that because the union can generate a minor dispute requiring arbitration over the meaning of these clauses, no injunction should issue pending arbitration. This would pervert *Buffalo Forge*, for the employer would then lose the benefit of its bargain that military flights would continue during a strike. Furthermore, since the flight attendants have a similar clause in their agreement and accordingly have been enjoined from extending their strike to military flights, any sympathy strike of military flights would do more than just supplement a preexisting work stoppage. Rather, such a sympathy strike would involve a separate and distinct work stoppage in an area of TIA's operations exempt from the primary strike. This would strongly conflict with the aim of the RLA to reduce strikes to an absolute minimum, and the court thus does not feel that an extension of *Buffalo Forge* to the situation regarding military flights would be appropriate. Although the court holds that the principles of *Buffalo Forge* do apply to the RLA, the differences between the statutory schemes of the RLA and NLRA demand great caution in applying that case beyond its facts to the RLA context.

Accordingly, it is hereby ORDERED that the defendant International Brotherhood of Teamsters, as representative for all of TIA's present flight engineers, their officers, agents, representatives, members, servants, employees, and any and all persons acting in concert with them, are hereby enjoined from authorizing, inducing, causing participation in, or otherwise aiding and abetting in any concerted refusal to work, sympathy strike, or honoring

of picket lines with respect to military flights under the military no-strike clauses of the applicable collective-bargaining agreements. Plaintiff TIA's motion for preliminary injunction with respect to its flight engineers is hereby denied in all other respects.

Furthermore, it is hereby ORDERED that defendant Airline Pilots Association, as representative for all of TIA's present pilots, their officers, agents, representatives, members, servants, employees, and any and all persons acting in concert with them, are hereby restrained from authorizing, inducing, causing participation in, or otherwise aiding and abetting in any concerted refusal to work, sympathy strike, or honoring of picket lines with respect to military flights under the military no-strike clauses of the applicable collective-bargaining agreements. Plaintiff TIA's motion for a temporary restraining order with respect to its pilots is hereby denied in all other respects. This temporary restraining order to remain in effect until a determination is made with respect to TIA's motion for a preliminary injunction, but in any case for no more than 10 days.

Dated: September 28, 1977

/s/ Robert F. Peckham
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF CALIFORNIA

No. C-77-2011 RFP

TRANS INTERNATIONAL AIRLINES, INC.,
Plaintiff,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, etc., AIRLINE DIVISION; TEAMSTER LOCAL 2707; MARVIN G. GRISWOLD; TEAMSTER LOCAL 732; AIRLINE PILOTS ASSOCIATION, INTERNATIONAL,
Defendants.

MEMORANDUM AND ORDER RE PILOTS

The facts of this labor dispute have already been fully set forth in this court's memoranda of September 26 and September 28, 1977. Plaintiff TIA now moves for a preliminary injunction against defendant ALPA regarding TIA's military flights. The matter has been fully heard by the court and has been submitted for decision on the record and pleadings on file.

The court has heard a substantial amount of testimony regarding TIA's varied and extensive efforts to continue its operations during the current strike in an attempt to defeat the strike. Nevertheless, the court does not feel that TIA's actions, which are all legally permissible and fairly common methods of countering the impact of a strike, are so inequitable as to require the denial of

injunctive relief.[1] These parties are engaged in a hard fought labor dispute that unfortunately has resulted in a test of their relative economic strength. In such a situation, it is not unusual or unfair for both sides to resort to all of the weapons legally available to them.

The court would also like to make note of an additional matter which has come to its attention during these proceedings. The testimony of Mr. Arthur Perkel of the Military Airlift Command (MAC) makes it clear that, without specifically intending to do so, the administration of MAC expansion business[2] will almost inevitably tend to strengthen the economic position of a struck airline, such as TIA, as against its striking employees. The number of airplanes freed by a strike against the airline's commercial flights allows the airline to seek and obtain a greater proportion of the available MAC expansion business. Furthermore, this effect can be greatly magnified if the cooperation of other airlines with MAC contracts can be obtained, as may have been the situation in this case. Although this effect troubles the court in granting this injunction, we do not feel that this matter is one for judicial resolution. Rather, such matters should be taken up with the proper parties within the executive branch, such as the Secretary of Defense and the Secretary of the Air Force.

Therefore, it is hereby ORDERED that plaintiff's motion for a preliminary injunction with regard to military flights is granted, for the reasons stated herein and in

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1. The court thus does not reach the underlying question of whether an injunction otherwise permitted by the Norris-La Guardia Act may be denied because of a party's inequitable behavior with regard to other facets of a labor dispute.

2. "MAC expansion business" refers to those military flights over and above the fixed number of flights per month to which each airline with a MAC contract is firmly committed.

the court's memorandum and order of September 28, 1977. The terms of this preliminary injunction are to be the same as the temporary restraining order of September 28, 1977.

Counsel for the plaintiff shall prepare a proposed form of judgment. Rule 58, Fed. R. Civ. Pro.

Dated: October 26, 1977

/s/ Robert F. Peckham
United States District Judge

APPENDIX D

TRANS INTERNATIONAL AIRLINES, INC.,
Plaintiff-Cross-Appellant,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, etc., Airline Division Teamster Local 2707; Marvin G. Griswold; Teamster Local 732, Defendants-Cross-Appellees.

TRANS INTERNATIONAL AIRLINES, INC.,
Plaintiff-Appellee/Cross Appellant,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al., Airline Division, Teamsters Local 2707, and Air Line Pilots Association, International, AFL-CIO, Defendants-Appellants/Cross Appellees.

Nos. 77-3362, 77-3363, 77-3395, 77-3781, 78-1148 and 78-1232.

United States Court of Appeals,
Ninth Circuit.

Feb. 14, 1980.

Supplemental air carrier and unions cross-appealed from orders of the United States District Court for the Northern District of California, Robert F. Peckham, Chief Judge, granting a preliminary injunction prohibiting both primary and sympathy strikes against the carrier to the extent they were directed to military flights, but not enjoining strikes against civilian flights. The Court of Appeals, Kennedy, Circuit Judge, held that: (1) unions' appeal was not mooted by the fact that the strikes were settled and a new collective bargaining agreement signed, since resolution of the issues presented was crucial to

deciding a substantial pending claim for damages sought by the carrier against the unions; (2) by reason of the Norris-LaGuardia Act, district court lacked jurisdiction to enjoin primary strike activity directed at carrier's military flights; once the major dispute mechanisms of the Railway Labor Act had been exhausted, unions could not be enjoined from using their full economic power in support of their demands; that is, the contract provision by which unions agreed not to strike military flights, even after RLA dispute mechanisms had been exhausted, was not enforceable by injunctive relief; and (3) district court had jurisdiction to enjoin the sympathy strike, in its entirety, pending determination of the contractual rights of the parties by adjustment board; that is, the carrier's flight engineers and pilots were required to resort to the minor dispute mechanisms of the Railway Labor Act to have their rights clarified before engaging in a sympathy strike in support of striking flight attendants.

Affirmed in part, reversed in part, and remanded.

Wallace, Circuit Judge, dissented in part with opinion.

1. Federal Courts (Key) 724

Appeal by unions from order granting a preliminary injunction against strike activity directed at plaintiff air carrier's military flights was not mooted by the fact that the strikes were settled and a new collective bargaining agreement signed, since resolution of the issues presented was crucial to deciding a substantial pending claim for damages sought by the carrier against the unions.

2. Action (Key) 6

A challenged action is not moot when it was in duration too short to be fully litigated prior to its cessation or expiration, and there is a reasonable expectation that the

same complaining party would be subjected to the same action again.

3. Federal Courts (Key) 757

Union's bargaining conduct was an alternative ground, in addition to collective bargaining agreement's military no-strike clause, for the injunction underlying contempt order against union; for that reason alone, even apart from the court's reluctance to fragment the appeal into "live" and "moot" issues, and the possibility that the dispute was not moot under the "capable of repetition yet evading review" standard, the union's bargaining behavior was part of the live case or controversy before the Court of Appeals.

4. Labor Relations (Key) 967

Air carrier was not prevented from seeking injunctive relief against alleged unlawful strike activity because of its own conduct, notwithstanding union's claim that the carrier had "unclean hands"; the practices complained of were not sufficiently likely to be found illegal or otherwise wrongful that the carrier should be prevented from seeking injunctive relief.

5. Labor Relations (Key) 179

Union, in the course of bargaining with air carrier, did not violate its obligation under the Railway Labor Act to exert every reasonable effort to make a collective bargaining agreement; the assertedly exorbitant size of union's proposals regarding wages, benefits, and working conditions did not demonstrate a refusal to make reasonable efforts to reach an agreement. Railway Labor Act, § 2, 45 U.S.C.A. § 152.

6. Labor Relations (Key) 416.4

By reason of the Norris-LaGuardia Act, district court lacked jurisdiction to enjoin primary strike activity directed at supplemental air carrier's military flights; once the major dispute mechanisms of the Railway Labor Act had been exhausted, unions could not be enjoined from using their full economic power in support of their demands; that is, the contract provision by which unions agreed not to strike military flights, even after RLA dispute mechanisms had been exhausted, was not enforceable by injunctive relief. Norris-LaGuardia Act, § 4, 29 U.S.C.A. § 104; Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

7. Labor Relations (Key) 416.4

Accommodation reached between the Norris-LaGuardia Act and the National Labor Relations Act does not necessarily carry over to disputes controlled by the Railway Labor Act; on the other hand, in cases which present difficult questions under the RLA but do not require statutory interpretations that are unique to the mechanisms of that Act, the doctrines developed by Congress and the courts from their experience in adjusting questions of labor law policy generally are instructive. Norris-LaGuardia Act, § 101 et seq., 29 U.S.C.A. § 101 et seq.; Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

8. Labor Relations (Key) 416.5

In general, when a contract provision is opened to negotiation, the provision is not kept in effect by operation of the Railway Labor Act once the procedures for major dispute resolution are exhausted. Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

9. Labor Relations (Key) 414

To encourage voluntary settlement of major disputes, the Railway Labor Act postpones the time for self-help remedies; however, if after reasonable effort the parties have exhausted the bargaining procedures specified by the RLA without agreement, the statute does not bar such remedies, including a strike. Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

10. Labor Relations (Key) 414

Once major dispute procedures are completed and the different pressures put on the parties to achieve voluntary settlements have been exhausted, ordinarily the employer and union are free to resort to traditional economic weapons; the Railway Labor Act does not, however, preclude the parties from adopting a different procedure by contract. Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

11. Labor Relations (Key) 249

Although, ordinarily, a union's promise not to strike is accompanied by a promise that the employer agrees to submit the dispute to binding arbitration, an arbitration clause is not required as a condition to holding a no-strike promise binding.

12. Labor Relations (Key) 853

Anti-injunction command of the Norris-LaGuardia Act may operate independently to bar an injunction notwithstanding the validity of the contract clause to be enforced. Norris-LaGuardia Act, § 4, 29 U.S.C.A. § 104.

13. Labor Relations (Key) 964

Absent a substantial nexus with statutory dispute settlement mechanisms or an agreement to arbitrate, an injunction may not issue to prevent a plain breach of a no-strike clause by a union.

14. Labor Relations (Key) 416.4

History of Railway Labor Act prevented the Court of Appeals from finding, in the Act's obligation to "maintain agreements," a broad mandate to enjoin all, or even plain, breaches of collective bargaining agreements by a union. Railway Labor Act, § 2, 45 U.S.C.A. § 152.

15. Labor Relations (Key) 414

Railway Labor Act was a response to the perceived dangers of disruption in the transportation industry. Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

16. Labor Realtions (Key) 414

Policy of the Railway Labor Act is not that any act which disrupts the transportation industry may be enjoined; instead, after major dispute procedures are completely exhausted, with reasonable efforts having been made to reach an agreement, the policies peculiar to the RLA are also exhausted and the parties are governed by general labor law principles. Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

17. Labor Relations (Key) 853

Norris-LaGuardia Act was passed to limit the role of the courts in enforcing labor contracts. Norris-LaGuardia Act, § 101 et seq., 29 U.S.C.A. § 101 et seq.

18. Labor Relations (Key) 416.4

If a no-strike clause in force during the life of contract was ambiguous as to whether the strike was permitted, the strike could be enjoined pending the outcome of minor dispute arbitration, and an arbitrator's determination that the strike should stop could be enforced in federal court by an injunction; but, anomalously, where the breach is so clear that arbitration is not necessary to determine the violation, no injunction may issue. Norris-LaGuardia Act, § 101 et seq., 29 U.S.C.A. § 101 et seq.; Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

19. Labor Relations (Key) 416.4

District court had jurisdiction to enjoin sympathy strike, in its entirety, pending determination of the contractual rights of the parties by adjustment board; that is, air carrier's flight engineers and pilots were required to resort to the minor dispute mechanisms of the Railway Labor Act to have their rights clarified before engaging in a sympathy strike in support of striking flight attendants. Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

20. Labor Relations (Key) 416.4

Implementation of the Railway Labor Act's process for resolving minor disputes is not limited to granting preliminary injunctive relief only where the relief will make it more likely that the dispute will be arbitrated. Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

21. Labor Relations (Key) 414

Requirement of arbitration under the Railway Labor Act is an essential part of the congressional purpose of

avoiding interruption of the transportation industry. Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

22. Labor Relations (Key) 414

Minor dispute arbitration procedure established by the Railway Labor Act was designed as a substitute for prearbitration strikes. Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

23. Labor Relations (Key) 414

Legislative history of the Railway Labor Act suggests an intent to prevent a dispute that involves a small number of transportation workers from disrupting the carrier's existing operations and its relations with other employees, and it would be contrary to this objective to permit a sympathy strike before completion of the minor dispute mechanisms for determining the legitimacy of the strike. Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

24. Labor Relations (Key) 416.4

A federal court under the Railway Labor Act may not enjoin a strike penalty in breach of contract where the major disputes mechanism of the Act have been used and exhausted. Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

25. Labor Relations (Key) 415

While the Railway Labor Act's policy of avoiding disruption of transportation businesses is not all-encompassing, the policy is strong enough to require that where a minor dispute exists the union must first establish its contractual right to engage in a sympathy strike before disrupting a carrier's operation; this does no more than

preserve the status quo pending clarification of the parties' rights by statutory procedures. Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

26. Labor Relations (Key) 415

Maintenance of the status quo before and during major dispute procedures is required by the Railway Labor Act. Railway Labor Act, § 6, 45 U.S.C.A. § 156.

27. Labor Relations (Key) 416.4

Where changes in the status quo are likely to lead to serious harm and threaten to disrupt the operation of the transportation carrier, injunctive relief is proper pending operation of the Railway Labor Act's minor dispute procedures. Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

28. Injunction (Key) 132

Maintenance of the status quo is a traditional basis for equitable relief.

Appeal from the United States District Court for the Northern District of California.

Before GOODWIN, WALLACE, and KENNEDY, Circuit Judges.

KENNEDY, Circuit Judge:

This case requires a determination, among other matters, of the extent to which the anti-injunction mandate of the Norris-LaGuardia Act, 29 U.S.C. §§ 101 *et seq.*, is applicable to common carriers and collective bargaining units subject to and regulated by the Railway Labor Act

(RLA), 45 U.S.C. §§ 151 *et seq.*[1] The RLA extends to airlines, 45 U.S.C. §§ 181-188, and Trans International Airlines (TIA), a principal party in this case, is one of the nation's largest supplemental air carriers. On November 30, 1976, TIA merged with Saturn Airways. The company operates separate flights for military and civilian carriage, transporting passengers and freight on both kinds of flights. At issue are two strikes against TIA, a primary strike by TIA's flight attendants and a sympathy strike by its flight engineers and pilots. At the time of the events in question both the flight attendants and the engineers are represented by the International Brotherhood of Teamsters, Airline Division (Teamsters). TIA's pilots are represented by the Air Line Pilots Association (ALPA), which also represented the premerger Saturn pilots.[2] The company obtained federal injunctive relief prohibiting both strikes to the extent they were directed to military flights, but the district court did not enjoin the strikes against civilian flights. Both the company and the affected Teamsters unions appeal from the rulings.

The contract negotiations between the Teamsters and the company, and the subsequent strikes, have the following history. TIA and the flight attendants were parties to a collective bargaining agreement for the period July 21, 1974 to April 1, 1976. The agreement contained a general no-strike clause, effective "during the term of

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1. Although we ultimately hold that the Norris-LaGuardia Act deprives the federal courts of jurisdiction to enjoin the primary strike in this case, federal question jurisdiction is conferred by 28 U.S.C. §§ 1331 & 1337, since the enforceability of the contract clauses at issue and the propriety of granting injunctive relief arise under the various sections of RLA, 45 U.S.C. §§ 151 *et seq.*

2. The Teamsters and ALPA stand in the same position with regard to the sympathy strike issues addressed below. Where appropriate, we use "Teamsters" or "the union" to refer to ALPA as well as the Teamsters.

this agreement." At the heart of the dispute over the legality of the primary strike lie further contract provisions, by which the parties agreed there would be no strikes against military flights and that this clause was effective "after the expiration of this agreement and/or during and after procedures of the Railway Labor Act have been exhausted . . . ."[3] In February of 1976 the Teamsters, acting for the flight attendants, served a notice of intent to amend the agreement. Under the Railway Labor Act this is a section 6 notice, which signals the union's intent to negotiate a new employment agreement. 45 U.S.C. § 156. The contract expiration date (April 1, 1976) arrived without the parties having reached accord. Pursuant to the provisions of the Railway Labor Act, the agreement remained in force during the dispute resolution procedures set in motion by the section 6 notice.

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3. The relevant contract provisions provide:

ARTICLE XII
No Strike—No Lockout

Section A. During the term of this Agreement, the Union shall not authorize, cause, sanction or engage in any strike, picketing, slowdown or stoppage of work.

Section B. During the term of this Agreement, the Company shall not cause, permit, or engage in any lockout of its Flight Attendants.

Section C. During the term of this Agreement, the Company reserves the right to discharge or otherwise discipline any Flight Attendant taking part in any strike, picketing, slowdown or stoppage of work.

Section D. The Union further agrees that the Flight Attendants will continue to perform all duties which are necessary to enable the Company to operate flights for or in support of traffic sponsored by the Department of Defense of the United States of America, even though such Flight Attendants withdraw from commercial airline service because of a dispute arising out of negotiations for a new contract after the expiration date of this Agreement and/or during and after all procedures of the Railway Labor Act have been exhausted, provided the Company shall submit to the Union, when requested, proof that a particular flight is being flown or operated under charter or contract to the Department of Defense.

See id. Further negotiations between the parties produced no agreement, and a mediator was assigned by the National Mediation Board on August 19, 1976.

The union refused voluntary arbitration, the mediator withdrew, and after expiration of the statutory 30-day cooling off period expired at midnight, September 7, 1977, the flight attendants struck all flights. TIA's flight engineers and pilots, in a sympathy strike, honored the flight attendants' primary strike and refused to cross the picket line.

TIA applied to the district court for an order prohibiting these groups of employees from striking. The district court ultimately granted a preliminary injunction prohibiting the flight attendants from striking TIA's military flights, but denied an injunction prohibiting flight attendants from striking TIA's other operations. A similar injunction was issued against the flight engineers and pilots, enjoining the sympathy strike as to military flights only.

In this court, the Teamsters moved to stay the military strike injunctions, and TIA moved for temporary injunctive relief pending decision of the appeal. Oral argument on these motions was heard by this panel. In addition to the motions for preliminary relief, the principal appeal from the district court's preliminary injunctions is pending before this circuit. Further, TIA and ALPA have filed separate appeals. Some of the issues raised in these appeals were not argued in the parties' motions for interim relief. Concluding, however, that further oral argument in these cases is unnecessary, these appeals, Nos. 77-3362, 77-3363, 77-3395, 77-3781, 78-1148 & 78-1232 are considered submitted to this panel on the date of filing of this opinion, and their disposition is controlled by this opinion.

In general, three contentions are advanced by the parties. First, quite apart from the argument that federal courts are prohibited by statute from enjoining the strikes, the Teamsters contend that TIA was not entitled to seek a preliminary injunction because the company's actions during the strike were so unfair that the company had unclean hands. In summary, the Teamsters claimed that TIA improperly stranded flight attendants at foreign ports; hired replacements; expanded the number of military flights (which the district court had enjoined the flight attendants, engineers and pilots from striking); terminated pilots for refusal to fly commercial planes or for other carriers; refused sick pay and monthly guarantees to strikers; and violated seniority rights in the selection of pilots for the military flights.

Second, TIA argues that the Teamsters' conduct during the course of the major disputes mediation procedures violated section 152 First of the RLA, which requires parties "to exert every reasonable effort to make" a collective bargaining agreement. If that were so, there would be authority to enjoin the strike and require the Teamsters to return to the bargaining table. *See Chicago & N. W. Ry. v. United Transportation Union,* 402 U.S. 570, 91 S.Ct. 1731, 29 L.Ed.2d 187 (1971). The principal bases of TIA's claim are (1) that the Teamsters, in the process of negotiating the integration of the premerger Saturn and TIA flight attendant agreements, more than doubled the number of proposals on the bargaining table by requesting approximately 200 contract changes after a year of negotiations and six months prior to the strike, and (2) that the cost of the Teamsters' initial proposal for flight attendants exceeded 250% of TIA's then-present payroll costs for TIA flight attendants, and its proposals after mediation by the National Mediation Board exceeded 200%

of TIA's total companywide profits for 1976 and represented a 294.6% increase in flight attendant payroll costs.

Finally, even if enjoining the Teamster's strike was not proper because of the union's bargaining tactics, TIA contends an injunction against strikes of military flights was proper because, among other reasons, the various groups of employees had promised not to strike TIA's military operations, even after bargaining under the RLA's disputes resolution procedures had been exhausted, and that an injunction against the sympathy strikes was proper pending minor dispute arbitration of the legality of the strikes.

[1] The strikes which were the subject of this lawsuit have been settled, and a new collective bargaining agreement was signed on January 12, 1978.[4] We must first decide whether this appeal is not moot.

We hold these appeals are not moot, primarily because resolution of the issues presented is crucial to deciding a substantial pending claim for damages sought by TIA against the Teamsters. The district court's preliminary injunctions were entered on September 26, 1977, and September 28, 1977. On October 26, 1977, the district court entered a further order in which it rejected the Teamsters' and ALPA's claim that TIA had "unclean hands" and thus was not entitled to the injunctions. This order formed the basis for appeals number 78-1148 and 78-1232. The Teamsters continued to urge employees to strike military flights. On November 1, 1977, the Teamsters were adjudicated in contempt of the district court's orders. TIA alleges its military operations were virtually shut down by striking flight attendants and flight engineers causing TIA ap-

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4. The contracts between TIA and its flight attendants, engineers, and pilots contain the same military no-strike clause which is discussed at greater length below.

proximately $400,000 in compensatory damages which it still seeks to recover from the Teamsters. The matter of compensatory fines was stayed by the district court on January 24, 1978, "pending the results of the appeals before the Court of Appeals for the Ninth Circuit in *TIA v. Teamsters,* Nos. 77-3362/3363/3395/3781."

Thus, the right of TIA to recover its alleged damages and the extent of recovery will be controlled, in part, by resolution of the overriding issue in these appeals: whether TIA was entitled to injunctive relief against either the primary or the sympathy strike. *See, e. g., Lewis v. S. S. Baune,* 534 F.2d 1115, 1119 (5th Cir. 1976) ("A judgment of civil contempt, being remedial in nature, stands or falls with the validity or invalidity of the order, and the opposing party should be compensated only if he was entitled to the order."); *Latrobe Steel Co. v. United Steelworkers,* 545 F.2d 1336, 1345-46 (3d Cir. 1976). Under these circumstances this appeal presents a live case or controversy for our decision.

The Teamsters agree that if the compensatory fine proceeding is permitted to continue, the issues presented on this appeal must be decided. They conclude, however, that we should order dismissed the contempt proceedings as well as these appeals. The Teamsters' argument is essentially this: in evaluating whether the controversy presented by this appeal from the original orders is moot, this court may not examine the posture of the pending contempt proceedings. We should, it is argued, decide whether this appeal is moot without reference to the possibility of damage liability in the contempt proceedings below, and if we determine the case is moot we should also instruct the district court to dismiss the contempt proceedings. We disagree with that reasoning.

The Teamsters contend we are governed by *Gompers v. Buck's Stove & Range Co.,* 221 U.S. 418, 31 S.Ct. 492,

55 L.Ed. 797 (1911). Procedurally *Gompers* does resemble this case. The company had secured an injunction against a boycott. Appeals were taken from this injunction. Before the appeal was decided, the company initiated contempt proceedings, and the defendants were adjudicated in contempt and sentenced to jail sentences. The original injunctive decree was upheld by the court of appeals, and some time later the contempt adjudication was also affirmed. By the time the appeals from the original injunction reached the Supreme Court, the parties had settled their differences. The Court accordingly dismissed the appeal as moot. *Buck's Stove & Range Co. v. American Federation of Labor,* 219 U.S. 581, 31 S.Ct. 472, 55 L.Ed. 345 (1911). Thereafter the Court also dismissed the appeal of the contempt adjudication as moot. It held:

> [W]hen the main cause was terminated by a settlement of all differences between the parties, the complainant did not require and was not entitled to any compensation or relief [in the contempt proceedings].

221 U.S. at 451-52, 31 S.Ct. at 503. *Gompers* has subsequently been refined, *see, e. g., Backo v. Carpenters Local 281,* 438 F.2d 176, 182 (2d Cir. 1970), *cert. denied,* 404 U.S. 858, 92 S.Ct. 110, 30 L.Ed.2d 99 (1971), but we think the Teamsters' discussion of *Gompers* and its progeny ignores a crucial distinction between that case and the instant case.

In *Gompers,* the parties had entered into a settlement which completely resolved all matters involved in the litigation between them. 221 U.S. at 451, 31 S.Ct. at 502; 219 U.S. 581, 31 S.Ct. 472 (1911). The determinations of mootness were predicated on this finding. In our case, by contrast, there has been no out-of-court settlement by the parties of "every material controversy which the rec-

ord present[s]." 219 U.S. at 581, 31 S.Ct. at 472. The strike has ended and the parties have signed a new collective bargaining agreement, but this does not constitute a settlement of the controversies which spawned this litigation. A recent third circuit case illustrates the point. In *Bituminous Coal Operators' Association, Inc. v. U. M. W.*, 585 F.2d 586 (3d Cir. 1978), the employer had sued for both injunctive relief and damages. While the appeal from the district court's orders was pending, the collective bargaining agreement which was allegedly breached expired and a new agreement was signed. The Union argued that this development mooted the case; the court of appeals disagreed:

> We note at the outset that the expiration of the 1974 agreement and the execution of the 1978 agreement have not mooted a claim for damages by the mine owners.

Id. at 599.

[2] The possibility of compensatory damage liability in this case arises from the civil contempt adjudication and not, as in *Coal Operators,* from a damages action under the NLRA. We perceive no constitutional distinction in this fact. *Cf. Latrobe Steel Co., supra,* 545 F.2d at 1345-46. A proceeding for civil contempt is part of the original action. *See, e. g., Gompers, supra,* 221 U.S. at 444-45, 31 S.Ct. at 499-500. For purposes of determining whether a live controversy exists on this appeal from the injunctive orders of the district court, we may consider the fact that the Union has been adjudicated in civil contempt of those orders, and that imposition of substantial compensatory damages depends on resolution of the issues presented on this appeal. *Cf. also American Bible Society v. Blount,* 446

F.2d 588 (3d Cir. 1971); *Meyers v. Jay Street Connecting Railroad*, 288 F.2d 356 (2d Cir. 1961).[5]

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5. Moreover, even were there no possibility of damages recovery in the further district court proceedings, this appeal probably would not be moot under the "capable of repetition, yet evading review" standard as elaborated in recent cases such as *Weinstein v. Bradford*, 423 U.S. 147, 96 S.Ct. 347, 46 L.Ed.2d 350 (1975), *Super Tire Engineering Co. v. McCorkle*, 416 U.S. 115, 94 S.Ct. 1694, 40 L.Ed.2d 1 (1974), and *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 99 S.Ct. 983, 59 L.Ed.2d 230 (1979), *Amalgamated Transit Union v. Greyhound Lines, Inc.*, 550 F.2d 1237, 1238 n.1 (9th Cir.), *cert. denied*, 434 U.S. 837, 98 S.Ct. 127, 54 L.Ed.2d 99 (1977), and *Bituminous Coal Operators' Association, Inc. v. U. M. M.*, 585 F.2d 586, 599-600 (3d Cir. 1978). Under these cases, a challenged action is not moot when:

> (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there (is) a reasonable expectation that the same complaining party would be subjected to the same action again.

The first prong of this test is met, as this strike ended before its legality could be fully litigated. As the Court has noted, "[T]he great majority of economic strikes do not last long enough for complete judicial review of the controversies they engender." *Super Tire Engineering v. McCorkle*, 416 U.S. 115, 126, 94 S.Ct. 1694, 1700, 40 L.Ed.2d 1 (1974).

There is also a reasonable expectation the same complaining parties will take similar action again. The September, 1977 strike was not the first strike of TIA by the Teamsters. In July of 1974, TIA's flight attendants and flight crewmembers, both represented by the Teamsters, struck TIA. Similarly, Saturn Airways, which merged into TIA, was the object of strikes by its pilots, represented by ALPA, in May of 1972. Saturn's flight engineers, attendants, and navigators, all represented by the Teamsters, struck Saturn again in August of 1974. Saturn secured a court order requiring the striking parties to return to work. Further, the actions of TIA in maintaining operations in the face of the strikes in this case were found by the district court to be common methods used by employers, and presumably reasonably likely to be used by TIA in the event of another strike. The Teamsters and ALPA continue to represent some of the groups of employees involved in this lawsuit. Thus the same parties whose conduct is at issue in this suit will continue to face each other across the bargaining table. Moreover, the new contract signed by TIA and the Teamsters on January 12, 1978, contains the same military no-strike clause which is the principal subject of this opinion. Finally, although the bargaining and subsequent strike giving rise to the instant dispute have been settled, the record before us on the issues presented for decision is no less concrete than it would be if the strike were ongoing.

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[3] The Teamsters raise another, more limited, mootness argument. They contend TIA's appeal from the district court's refusal to enjoin a strike against its commercial operations is moot. Noting that TIA's flight attendants (but not its engineers) now have a different bargaining representative (the Association of Flight Attendants), the Teamsters argue there can be no expectation that TIA will be subjected again to the Teamsters' alleged bad-faith bargaining tactics. We reject this argument. If the Teamsters did not make a reasonable effort to reach an agreement during major disputes bargaining, its strikes against both commercial and military flights could be enjoined. The Union's bargaining conduct was an alternative ground —in addition to the military no-strike clause—for the injunction underlying the contempt order. For this reason alone, even apart from our reluctance to fragment this appeal into "live" and "moot" issues, and the possibility that the dispute is not moot under the "capable of repetition yet evading review" standard, *see Weinstein v. Bradford*, 423 U.S. 147, 96 S.Ct. 347, 46 L.Ed.2d 350 (1975); *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 187, 99 S.Ct. 983, 992, 59 L.Ed.2d 230 (1979); *Amalgamated Transit Union v. Greyhound Lines, Inc.*, 550 F.2d 1237, 1238 n.1 (9th Cir.), *cert. denied*, 434 U.S. 837, 98 S.Ct. 127, 54 L.Ed.2d 99 (1977), the Union's bargaining behavior is part of the live case or controversy before us. *See Coal Operators, supra*, 585 F.2d at 600.

[4] Turning to the merits, we address first the clean hands issue. We affirm the district court's finding, on the motion for preliminary relief, that TIA was not prevented

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Footnote continued—

Our reliance on the potential pending damage liability makes it unnecessary for us to consider whether TIA's failure to request declaratory relief in its original complaint would affect a decision regarding mootness, *see Coal Operators, supra*, 585 F.2d at 599-600; *Japan Air Lines Co. v. International Association of Machinists*, 538 F.2d 46, 50-51 (2d Cir. 1976).

from seeking injunctive relief because of its own conduct. Without explicitly passing on the accuracy of the Teamster's characterization, the district court concluded:

> TIA's varied and extensive efforts to continue its operations during the current strike in an attempt to defeat the strike . . . are all legally permissible and fairly common methods of countering the impact of a strike . . . These parties are engaged in a hard-fought labor dispute that unfortunately has resulted in a test of their relative economic strength. In such a situation, it is not unusual or unfair for both sides to resort to all of the weapons legally available to them.

The activities of which the union complains are not discussed in detail in the district court's opinion of October 26, 1977,[6] but the parties have presented their views of

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6. The opinion of the district court was as follows:

MEMORANDUM AND ORDER RE PILOTS

The facts of this labor dispute have already been fully set forth in this court's memoranda of September 26 and September 28, 1977. Plaintiff TIA now moves for a preliminary injunction against defendant ALPA regarding TIA's military flights. The matter has been fully heard by the court and has been submitted for decision on the record and pleadings on file.

The court has heard a substantial amount of testimony regarding TIA's varied and extensive efforts to continue its operations during the current strike in an attempt to defeat the strike. Nevertheless, the court does not feel that TIA's actions, which are all legally permissible and fairly common methods of countering the impact of a strike, are so inequitable as to require the denial of injunctive relief. These parties are engaged in a hard fought labor dispute that unfortunately has resulted in a test of their relative economic strength. In such a situation, it is not unusual or unfair for both sides to resort to all of the weapons legally available to them.

The court would also like to make note of an additional mater which has come to its attention during these proceedings. The testimony of Mr. Arthur Perkel of the Military Airlift Command (MAC) makes it clear that, without spe-

(Continued on following page)

TIA's conduct in their briefs. Having reviewed their contentions, we cannot conclude that the district court applied a legally improper standard or made clearly erroneous findings of fact. On the motion for preliminary relief it was not improper to conclude that the practices complained of were not sufficiently likely to be found illegal or otherwise wrongful that TIA should be prevented from seeking injunctive relief. *See Illinois Central R. R. v. Brotherhood of R. R. Trainmen,* 398 F.2d 973 (7th Cir. 1968); *Brotherhood of R. R. Trainmen v. Akron & B. B. R. R. Co.,* 128 U.S.App.D.C. 59, 92, 385 F.2d 581, 614 (D.C. Cir. 1968), *cert. denied,* 390 U.S. 923, 88 S.Ct. 851, 852, 19 L.Ed.2d 983 (1968); *Long Island R. R. Co. v. System Federation No. 156,* 368 F.2d 50 (2d Cir. 1966).

[5] Similarly, we affirm the district court's finding that the Teamsters did not violate the obligations imposed by section 152 First in the course of their bargaining with

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Footnote continued—

cifically intending to do so, the administration of MAC expansion business will almost inevitably tend to strengthen the economic position of a struck airline, such as TIA, as against its striking employees. The number of airplanes freed by a strike against the airline's commercial flights allows the airline to seek and obtain a greater proportion of the available MAC expansion business. Furthermore, this effect can be greatly magnified if the cooperation of other airlines with MAC contracts can be obtained, as may have been the situation in this case. Although this effect troubles the court in granting this injunction, we do not feel that this matter is one for judicial resolution. Rather, such matters should be taken up with the proper parties within the executive branch, such as the Secretary of Defense and the Secretary of the Air Force.

Therefore, it is hereby ORDERED that plaintiff's motion for a preliminary injunction with regard to military flights is granted, for the reasons stated herein and in the court's memorandum and order of September 28, 1977. The terms of this preliminary injunction are to be the same as the temporary restraining order of September 28, 1977.

Counsel for the plaintiff shall prepare a proposed form of judgment. Rule 58, Fed.R.Civ.Pro.

TIA. The facts allegedly demonstrating the Teamsters' lack of reasonable effort to make an agreement have already been described. The district court, in finding no violation, noted that the increase in the number of Teamster bargaining proposals, from 61 in early 1976 to over 200 in March of 1977, was a reasonable response to the merger between TIA and Saturn:

> The testimony heard by the court on this matter indicates that what the Teamsters were trying to do with the introduction of their March, 1977, proposal was to integrate the old Saturn and old TIA agreements, taking the best from both. Since the carriers were newly merged and the Teamsters were now representing a larger group of flight attendants, it hardly seems unreasonable for them to modify their previous proposal substantially to meet the new conditions.

The court found, "negotiations did not get under way [] in earnest until approximately the time the Teamsters introduced their new proposal," and concluded that the increased number of proposals was reasonable in light of the recent merger between TIA and Saturn. The district court's finding is not clearly erroneous and must be affirmed. Similarly, its finding that the assertedly exorbitant size of the Teamsters' proposals regarding wages, benefits, and working conditions did not demonstrate a refusal to make reasonable efforts to reach an agreement must, on this record, also be affirmed. The court held: "The court can find no previous decision under the RLA, nor can TIA suggest one, which has inferred lack of reasonable effort solely from the size of the proposals put forth by the parties." The court noted that the union had reduced its proposals on two occasions, and characterized the bargaining as "obstinate and unyielding" but not in violation of the statutory standards.

We do not hold that a union's insistence on proposals of the kind involved here could never be the basis for a finding that a union did not comply with its obligations under section 152 First; but in this case the district court's finding is not clearly erroneous. *Cf. REA Express, Inc. v. Brotherhood of Railway Clerks,* 358 F.Supp. 760, 772 n.43 (S.D.N.Y.1971) and cases cited therein. *Cf. also Atlantic Coast Line R. R. Co. v. Brotherhood of Railway Trainmen,* 262 F.Supp. 177, 183-85 (D.D.C.1967).

[6] We are confronted, then, with TIA's argument that injunctive relief against the primary strike was appropriate because of language contained in the collective bargaining agreement. The Teamsters argue that the district court lacked jurisdiction to issue the injunction by reason of section 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104, maintaining that once the major dispute mechanisms of the RLA had been exhausted, the unions could not be enjoined from using their full economic power in support of their demands. We agree.

[7] The accommodation reached between the Norris-LaGuardia Act and the National Labor Relations Act does not necessarily carry over to disputes controlled by the RLA. In this regard, the Supreme Court has stated: "The relationship of labor and management in the railroad industry has developed on a pattern different from other industries. The fundamental premises and principles of the Railway Labor Act are not the same as those which form the bases of the [NLRA] . . . ." *Brotherhood of Railroad Trainmen v. Chicago River & I. R. R.,* 353 U.S. 30, 31-32 n.2, 77 S.Ct. 635, 1 L.Ed.2d 622 (1957). On the other hand, in cases which present difficult questions under the RLA but do not require statutory interpretations that are unique to the mechanisms of that Act, the doctrines developed by Congress and the courts from their experience

in adjusting questions of labor law policy generally are instructive. For an analogy, and to determine national labor policy, it is appropriate to refer to the NLRA for assistance in construing the RLA. *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 383-84, 89 S.Ct. 1109, 22 L.Ed.2d 344 (1969).

The principal question with respect to the primary strike is whether the contract provision by which the union agreed not to strike military flights, even after RLA dispute mechanisms had been exhausted, is enforceable by injunctive relief. Decision of this question requires an analysis of the dispute resolution mechanisms of the RLA. The RLA provides that "minor disputes" are to be resolved by binding arbitration. A second set of procedures is designed to facilitate a voluntary agreement of the parties in major disputes. *See Elgin, J. & E. Ry. v. Burley*, 325 U.S. 711, 65 S.Ct. 1282, 89 L.Ed. 1886 (1945); *O'Donnell v. Wien Air Alaska, Inc.*, 551 F.2d 1141 (9th Cir. 1977). The minor disputes provisions

> contemplate[] the existence of a collective agreement already concluded or, at any rate, a situation in which no effort is made to bring about a formal change in terms or to create a new one. The dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation or to an omitted case.

Elgin, supra, 325 U.S. at 723, 65 S.Ct. at 1290. The major disputes provisions relate to disputes over the formation of collective agreements or efforts to secure them. The Act's procedures for major disputes have been described as follows:

> A party desiring to effect a change of rates of pay, rules, or working conditions must give advance written notice. § 6. The parties must confer, §2 Second, and

> if conference fails to resolve the dispute, either or both may invoke the services of the National Mediation Board, which may also proffer its services *sua sponte* if it finds a labor emergency to exist. § 5 First. If mediation fails, the Board must endeavor to induce the parties to submit the controversy to binding arbitration, which can take place however, only if both consent. § 5 First, 7. If arbitration is rejected and the dispute threatens "substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President," who may create an emergency board to investigate and report on the dispute. § 10. While the dispute is working its way through these stages, neither party may unilaterally alter the *status quo*. § 2 Seventh, 5 First, 6, 10.

Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co., supra, 394 U.S. at 378, 89 S.Ct. at 1115.

[8, 9] In general, when a contract provision is opened to negotiation, the provision is not kept in effect by operation of the RLA once the procedures for major dispute resolution are exhausted. To encourage voluntary settlement of major disputes, the RLA postpones the time for self-help remedies. However, if after reasonable efforts the parties have exhausted the bargaining procedures specified by the RLA without agreement, the statute does not bar such remedies, including a strike.

> For [the] settlement [of major disputes] the statutory scheme retains throughout the traditional voluntary processes of negotiation, mediation, voluntary arbitration, and conciliation. Every facility for bringing about agreement is provided and pressures for mobilizing public opinion are applied. The parties are required to submit to the successive procedures

> designed to induce agreement. § 5 First (b). But compulsions go only to insure that those procedures are exhausted before resort can be had to self-help.

Elgin, supra, 325 U.S. at 725, 65 S.Ct. at 1291. *See also Jacksonville Terminal Co., supra,* 394 U.S. at 379-80, 89 S.Ct. at 1115-16. All concede that the primary strike by the flight attendants did not commence until the major dispute resolution procedures of the Act had been exhausted.

We think there can be no question about the meaning of the military no-strike clause in this case. We agree with the conclusions of the district court in this regard. As Judge Peckham stated:

> The clear import of this provision is to extend the no-strike obligation of the flight attendants beyond the term of the collective-bargaining agreement, even beyond the expiration of the 30-day cooling-off period mandated by the RLA, when the Teamsters would otherwise have the right to strike against all of TIA's operations. The Teamsters do not dispute the meaning of this provision .... This military no-strike clause could not be clearer in expressing its intent that the flight attendants thereby give up their right to strike TIA's military flights even during those periods when they might strike all of TIA's other operations.

A contrary interpretation would render material portions of the clause meaningless. TIA would not secure the union's promise not to strike military flights after exhaustion of RLA procedures if it were intended that operation of the procedures nullified the obligation. The flight attendants' strike, therefore, violated the military no-strike clause, and resort to minor dispute arbitration is not necessary to reach this conclusion. *See Wien, supra* at 1146-47; *Seaboard*

World Airlines, Inc. v. Transport Workers Union, 425 F.2d 1086, 1090 (2d Cir. 1970).

Similarly, we think the Teamsters' strike in violation of their contract obligation did not present a major dispute. In the normal case, once having exhausted major disputes procedures the parties are free to resort to self-help. The military no-strike clause had already been the subject of bargaining in the major disputes sessions. We hold, *infra*, that, as the parties intended, the clause was binding even after exhaustion of those procedures, but TIA advances no theory by which this fact makes the strike enjoinable as involving a major dispute.

[10] We find no authority by which the contract clause in question can be held to violate RLA policies. Once major dispute procedures are completed and the different pressures put on the parties to achieve voluntary settlements have been exhausted, it is true that ordinarily the employer and the union are free to resort to the traditional economic weapons. *Brotherhood of Locomotive Engineers v. Baltimore & O. R.R.*, 372 U.S. 284, 291, 83 S.Ct. 691, 695, 9 L.Ed.2d 759 (1963) (per curiam); *Elgin, supra*. The RLA does not, however, preclude the parties from adopting a different procedure by contract. *Cf. Mastro Plastics Corp. v. NLRB*, 350 U.S. 270, 279-84, 76 S.Ct. 349, 356-59, 100 L.Ed. 309 (1956).[7]

[11] Whatever may be that limitation on the extent of damages properly awarded in an action at law, see note 9 *infra*, a question we do not reach here, we perceive no policies peculiar to the RLA which prohibit the parties from regulating by contract their post-major disputes relations in the manner they have here. It is true that ordi-

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7. For instance, nothing in our holding today prevents parties from agreeing to binding arbitration after the major dispute mechanisms of the Act are exhausted.

narily a union's promise not to strike is accompanied by a promise that the employer agrees to submit the dispute to binding arbitration. The parties have not directed our attention, however, to cases requiring an arbitration clause as to condition to holding the no-strike promise binding.

[12] A determination that the military no-strike clause is valid and not contrary to RLA policies does not control the ultimate question whether the contract clause may be enforced by injunctive relief. The anti-injunction command of the Norris-LaGuardia Act may operate independently to bar an injunction notwithstanding the validity of the contract clause to be enforced, and we rule the injunctive power of the federal court may not be used to enforce the no-strike clause here.

If this case arose under the NLRA, an injunction would not be granted. *See Buffalo Forge Co. v. United Steelworkers,* 428 U.S. 397, 404-12, 96 S.Ct. 3141, 3146-50, 49 L.Ed.2d 1022 (1976) (majority); *id.* at 424 n.15, 426 n.20, 96 S.Ct. at 3155 n.15, 3156 n.20 (dissent); *Boys Markets, Inc. v. Retail Clerks Union,* 398 U.S. 235, 90 S.Ct. 1583, 26 L.Ed.2d 199 (1970). As the Court in *Buffalo Forge* stated:

> "[T]here is no general federal anti-strike policy; and although a suit may be brought under § 301 against strikes which, while they are breaches of private contracts, do not threaten any additional public policy, in such cases the anti-injunction policy of Norris-LaGuardia should prevail."

428 U.S. at 409, 96 S.Ct. at 3148, *quoting Sinclair Refining Co. v. Atkinson,* 370 U.S. 195, 225, 82 S.Ct. 1328, 1344, 8 L.Ed.2d 440 (1962) (dissent). If we were persuaded that a substantial purpose unique to the RLA, or protection of its dispute settlement mechanisms, would be substantially furthered by specific enforcement of the clause, we

would sustain the order for injunctive relief, but no such conditions exist here.

We do acknowledge that there are some considerations which make an injunction appear appropriate in this case, although for reasons stated below we do not find them dispositive. Enforcement of a no-strike clause may have a salutary effect on labor relations, since the employer presumably will consent to a contract for a shorter term in return for a no-strike clause enforceable by an injunction, which reduces the risks inherent in renegotiating the contract. Frequent negotiation, under this view, furthers industrial stability by permitting more precise adjustments to meet changing economic conditions.

Further, the breach of contract in this case is plain and unambiguous. One might argue that unambiguous contract breaches could be enjoined without doing violence to any Norris-LaGuardia Act policy. *See* Note, *The Applicability of Boys Markets to Refusals to Cross a Picket Line,* 76 Colum.L.Rev. 113, 136-41 (1976). *Cf. Buffalo Forge, supra,* 428 U.S. at 416-17, 96 S.Ct. at 3151-52 (dissent) (purpose of Norris-LaGuardia Act is to protect labor organizing and ability to bargain collectively, not to prohibit enforcement of collective bargaining agreements); F. Frankfurter & N. Greene, The Labor Injunction 5-46 (1930); Smith, *The Supreme Court, Boys Markets Labor Injunctions, and Sympathy Work Stoppages,* 44 U.Chi.L.Rev. 321, 341 (1977).

Moreover, in this case the military no-strike clause was directed to the discrete transportation function of military flights the union retaining the right to strike other TIA flights. In addition, apparently the federal government insisted that the company insert the clause as a condition of obtaining military contracts. The no-strike

clause therefore furthered specific government transportation interests.[8]

Finally, the RLA contains a statutory provision requiring the parties to a contract to maintain their agreement without breach. 45 U.S.C. § 152 First provides:

> It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes . . . in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

The Supreme Court in *Chicago & N.W. Ry. v. United Transportation Union,* 402 U.S. 570, 91 S.Ct. 1731, 29 L.Ed. 2d 187 (1971) held that this section imposed a substantive duty on parties, enforceable by injunctive relief, to exert reasonable efforts during the negotiating process to reach an agreement. More to the point, the duty to maintain agreements was found a basis for injunctive relief in *Seaboard World Airlines, Inc. v. Transport Workers Union,* 425 F.2d 1086 (2d Cir. 1970), *reaff'd in further consideration,* 443 F.2d 437 (2d Cir. 1971), and *Southern Pacific Transportation Co. v. Railway & Steamship Clerks,* 81 L.C. para. 13,113 (N.D.Cal.1975). The Second Circuit in *Seaboard* permitted an injunction to prohibit a strike in violation of the union's contractual promise not to reopen

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8. The Government's transportation interests are protected to some extent by 45 U.S.C. § 160. The Mediation Board may notify the President of disputes which threaten serious disruption, and the President may then create a board to investigate and report respecting the dispute. For the thirty days allowed for the board's work, and for thirty days thereafter, no change in the status quo is permitted except by agreement of the parties.

certain subjects for RLA major dispute bargaining before a given date.[9]

[13-17] The difficulty in relying on the above considerations to justify injunctive relief is that, with the exception of the language in section 152, all of these factors if present in a case arising under the NLRA would be insufficient to permit an injunction to issue. Absent a substantial nexus with statutory dispute settlement mechanisms or an agreement to arbitrate, an injunction may not issue to prevent a plain breach of a no-strike clause by a union. The language of section 152 is perhaps unique to the RLA. The history of the RLA, nevertheless, prevents us from finding in the Act's obligation to "maintain agreements" a broad mandate to enjoin all, or even plain, breaches of collective bargaining agreements by a union. Without question, the RLA was a response to the perceived dangers of disruption in the transportation industry. This history has been described elsewhere and need not be repeated here. *See Chicago & N.W. Ry., supra,* 402 U.S. at 574-84, 91 S.Ct. at 1733-39; *Chicago River, supra,* 353 U.S. at 40, 77 S.Ct. at 640; *Elgin, supra,* 325 U.S. at 724-27, 65 S.Ct. at 1290-92; *Wien, supra* at 1145-46. The important point is that Congress responded to these concerns

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9. In *Seaboard* the parties, by supplemental agreement, had resolved an issue of job security for flight navigators displaced by technological change and it was agreed not to reopen the issue for a period of ten years. The rest of the bargaining agreement came due for reopening at an earlier date. At that date, the union served a section 6 notice which included a request to negotiate the flight navigator question, the very issue put out of reach by the supplemental agreement. When the airline refused to negotiate the issue, the union struck, arguing that the carrier was avoiding its obligations to bargain under the major disputes provision of the Act. The court held that an anti-strike injunction could issue pending resolution by the district court of the question whether the extended prohibition on reopening the particular subject was illegal, and it later affirmed both the district court's conclusion that the clause was legal and its grant of an injunction against similar strikes in the future.

by implementing a comprehensive system of binding arbitration and mandatory nonbinding mediation involving drawn-out procedures designed to encourage parties to reach agreement. The policy of the statute is not that any act which disrupts the transportation industry may be enjoined. Instead, after major dispute procedures are completely exhausted, with reasonable efforts having been made to reach an agreement, *see Chicago & N.W. Ry., supra,* the policies peculiar to the RLA are also exhausted, and the parties are governed by general labor law principles. The Norris-LaGuardia Act was passed to limit our role in enforcing labor contracts, in part because of mistakes of the past and in part, perhaps, for fear that personal bias sometimes difficult to detect even in ourselves will weigh too heavily in the enforcement process. *See, e. g., Chicago River, supra,* 353 U.S. at 40-41, 77 S.Ct. at 640-641; F. Frankfurter & N. Greene, *supra.* Congress has mandated the courts not to alter through injunctions the economic balance between employers and unions without a weighty statutory reason for doing so.[10] The RLA plan for avoiding disruption is not threatened by the flight attendants' strike, and a proper accommodation between the Norris-LaGuardia Act and the NLRA, as determined by the Supreme Court, prohibits enjoining the Teamsters' strike; therefore, the strike in this case may not be enjoined. *See generally Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co., supra,* 394 U.S. at 374-93, 89 S.Ct. at 1113-24 ("[P]arties who have unsuccessfully

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10. For example, if we were to enforce the military no-strike clause by an injunction, it might be appropriate to limit its duration to a reasonable time, rather than indefinitely. To define a reasonable time for enforcement probably would require a decision as to when hardship on the union becomes so great that the injunction should be lifted so the union can begin punishing the employer for refusal to accede. Whatever might be our powers to make such judgments in damage actions for breach of contract, the Norris-LaGuardia Act was designed to preclude courts from issuing injunctions on this kind of determination.

exhausted the Railway Labor Act's procedures for resolution of a major dispute [may] employ the full range of whatever peaceful economic power they can muster, so long as its use conflicts with no other obligation imposed by federal law." *Id.* at 392, 89 S.Ct. at 1123).

Seaboard does not require a different result. There the court held that a section 6 notice does not open all possible subjects for bargaining between the parties if they have contracted otherwise, and that the parties may agree beforehand not to reopen certain issues when the rest of the collective bargaining agreement comes up for renegotiation pursuant to section 6. Its reasoning does not support TIA's view of section 152. *Seaboard* involved the effect of contractual efforts to limit the scope of a section 6 proceeding, instead of efforts to specify permissible post-mediation measures. Also, unlike the case before us, the injunction in *Seaboard* enabled the parties to complete required bargaining on all other issues subject to a section 6 notice, and thus pursue dispute settlement procedures not yet exhausted.

Chicago & N.W. Ry. similarly does not support enjoining a primary strike for the purpose of enforcing a clause in the collective bargaining agreement. The rationale for the injunction in that case was that the union had failed to use reasonable efforts to comply with the mandatory disputes settlement mechanisms that lie at the heart of the act. The integrity of these mechanisms was thus protected by the injunction in *Chicago & N.W. Ry.*; enjoining the Teamsters' primary strike in this case would not similarly further the RLA's arbitration policies. We do not think *Chicago & N.W. Ry.* is authority for abandoning the Norris-LaGuardia Act's anti-injunction provisions

whenever a union subject to the RLA has plainly violated its collective bargaining agreement.

[18] It might appear anomalous that if a no-strike clause in force during the life of the contract was ambiguous as to whether the strike was permitted, the strike could be enjoined pending the outcome of minor dispute arbitration, and an arbitrator's determination that the strike should stop could be enforced in federal court by an injunction, *see Order of Ry. Conductors & Brakemen v. Spokane P. & S. R.R.*, 366 F.2d 99, 102 (9th Cir. 1966), *cert. denied*, 385 U.S. 1025, 87 S.Ct. 752, 17 L.Ed.2d 673 (1967) (RLA); *Steelworkers v. Enterprise Corp.*, 363 U.S. 593, 80 S.Ct. 1358, 4 L.Ed.2d 1424 (1960) (NLRA), but that where the breach is so clear that arbitration is not necessary to determine the violation, no injunction may issue. This result, however, is compelled by the combination of the manner in which Congress and the RLA chose to reduce disruption in the transportation industry, and the controlling interpretations of the Norris-La Guardia Act.

[19] The second principal issue on this appeal is the authority of the district court to enjoin any aspect of the sympathy strike. The district court held that it could enjoin only the sympathy strike directed against military flights. *Trans International Airlines, Inc. v. International Brotherhood of Teamsters*, 439 F.Supp. 184 (N.D. Cal.1977). We think the district court had jurisdiction to enjoin the sympathy strike in its entirety.

Differences among the contracts of the premerger TIA flight engineers and pilots, the former Saturn flight engineers, and the former Saturn pilots, bear on the issues addressed below, and we set forth relevant portions of

the contracts in the margin.[11] The controlling collective bargaining agreements between the carrier and the flight

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11. As a result of the merger in 1976 of TIA and Saturn Airways, at the time of the events in question former Saturn engineers and pilots were governed by a different contract than the premerger TIA engineers and pilots. As we discuss further below, see pages .....-....., slip op. pages 2059-2060, differences in contract language between the former Saturn flight engineers and the premerger TIA flight engineers and pilots would bear on the propriety of granting preliminary relief. In relevant part, the contracts provide:

PRE-MERGER TIA FLIGHT ENGINEERS AND PILOTS
(Agreement of July 21, 1974)

"SECTION 21

A. [General No Strike Clause] During the term of this Agreement, the Union shall not authorize, cause, sanction or engage in any strike, picketing, slowdown or stoppage of work.

. . . . .

D. [Military No Strike Clause] The Union further agrees that the Crewmembers will continue to perform all duties which are necessary to enable the Company to operate flights for or in support of traffic sponsored by the Department of Defense of the United States of America, even though such Crewmembers withdraw from commercial airline service because of a dispute arising out of negotiations for a new contract after the expiration date of this Agreement and/or during and after all procedures of the Railway Labor Act have been exhausted, . . .

E. [Picket Line Clause] It shall not be a violation of this Agreement, and it shall not be a cause for discharge or disciplinary action in the event a Crewmember refuses to go through or work behind a legal primary picket line maintained by the Union in connection with a dispute between the Company and the Union involving any flight personnel represented by the Union."

FORMER SATURN FLIGHT ENGINEERS
(Agreement of November 17, 1974)

"Section 24

. . . . .

L. [General No Strike Clause] The Company will not lock out any employees covered by this Agreement and the Union and its members, individually and collectively, agree that they will not authorize or take part in any strike or picketing at the Company's premises during the life of this Agreement, until the procedures for settling disputes involving employees

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engineers and pilots, both with premerger TIA employees and former Saturn employees, contained a no-strike clause and a military no-strike clause, and the question whether the sympathy strike was in violation of the contracts presents a minor dispute under the Act. Both TIA and the Teamsters agree that the dispute must be resolved through the Act's binding arbitration procedures for minor disputes. We cannot say that either TIA's or the Teamsters' interpretation of the contracts are completely without merit. Interpretation of the collective bargaining agreements with respect to the sympathy strike is therefore in the first instance a matter for the adjustment board rather than a court. The question presented for our decision is whether the flight engineers and pilots are required to resort to the minor dispute mechanisms of the Act to have their rights clarified before engaging in the sympathy strike.

Footnote continued—

covered by this Agreement, as provided for by the Railway Labor Act, have been exhausted by both parties.

. . . . .

P. [Military No Strike Clause] Conduct of Military Operations—It is mutually agreed that during the term of the Agreement between the Company and its Flight Engineers as represented by the Union, that the Flight Engineers will not engage in any strike or work stoppage on purely military operations conducted by the Company."

FORMER SATURN PILOTS
(Agrement of May 23, 1972)

This contract contains no general no-strike agreement as such, although it does, in Section 26 C 12, reserve to each party all the rights and privileges accorded under the provisions of the Railway Labor Act.

"Section 29

. . . . .

K. [Military No Strike Clause] In the interest of national defense and in the event of the withdrawal from service from Saturn Airways, Inc., of crew members covered by this agreement, essential military services shall be permitted to operate; provided, however, that this policy shall only pertain to those flights that are solely and completely military in nature and whose entire cargo is comprised of military commodities or military personnel."

The court in *Chicago River, supra,* permitted injunctions to be issued, the Norris-LaGuardia Act notwithstanding, when the strike threatened the jurisdiction of the minor dispute arbitrator. Subsequent to *Chicago River,* the Court also permitted strikes to be enjoined to protect binding arbitration provisions in a collective bargaining agreement arising under the NLRA. *Boys Markets v. Retail Clerks,* 398 U.S. 235, 90 S.Ct. 1583, 6 L.Ed.2d 199 (1970) (reversing *Sinclair Refining Co. v. Atkinson,* 370 U.S. 195, 82 S.Ct. 1328, 8 L.Ed.2d 440 (1962)). *Buffalo Forge Co. v. United Steelworkers,* 428 U.S. 397, 96 S.Ct. 3141, 49 L.Ed.2d 1022 (1976) then clarified the *Boys Markets* case, holding that in NLRA cases the Norris-LaGuardia Act deprived federal courts of jurisdiction to enjoin a sympathy strike, even where the strike is clearly forbidden by a contractual no-strike clause and the parties have agreed to binding arbitration. The Court concluded that the sympathy strike was not "over an arbitrable grievance."

Chicago River, arising under the RLA, and *Boys Markets,* arising under the NLRA, reached parallel results; indeed the later case made specific reference to the principles elaborated in *Chicago River.* The close relation of those cases does not mean, however, that the injunctive power of the federal courts is coextensive under the two statutes. *See Sinclair Refining, supra,* 370 U.S. at 210-11, 82 S.Ct. at 1336-37. We conclude that not all of the reasoning of *Buffalo Forge* applies in RLA cases and that policies unique to RLA support jurisdiction to enjoin the sympathy strike in this case.

A principal goal of the Court in *Buffalo Forge* was to avoid judicial intrusion on an arbitration form established by contract. The Court pointed to the dangers of judicial declarations that might control an arbitrator's

determination of the case, a responsibility assigned exclusively to him by agreement of the parties. *See* 428 U.S. at 410-12, 96 S.Ct. at 3148-50. The Court refused to conclude, in the absence of express language in the contract, that the parties intended to allow preliminary injunctive relief pending arbitration, where such relief was not necessary to insure arbitration of the dispute. *See id.* at 411, 96 S.Ct. at 3149. Perhaps the Court was also worried that a contrary result would lead to fewer arbitration clauses in collective bargaining agreements, the unions being less willing to agree to arbitrate disputes or to proceed to arbitration following a preliminary injunction. *See id.* at 412, 96 S.Ct. at 3149. These considerations are inapplicable here. Congress in the RLA established a process of minor dispute settlement without reference to any arbitration framework which would have been agreed upon by the parties. The permissible prearbitration remedies agreed upon by the parties, and the effect of our decision on the number of minor disputes likely to be settled by arbitration, are not issues presented by this case.

[20-23] Moreover, implementation of the RLA's process for resolving minor disputes is not limited to granting preliminary injunctive relief only where the relief will make it more likely that the dispute will be arbitrated.[12]

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12. The *Buffalo Forge* result has been explained by some commentators as resting on the insight that enjoining a sympathy strike does not make it more likely that the arbitrable dispute—the contractual right to engage in a sympathy strike—will be decided by the arbitrator. *See, e. g.*, 63 Cornell L.Rev. 507, 512 n.29 (1978); Note, *The Applicability of Boys Markets to Refusals to Cross a Picket Line*, 76 Colum.L.Rev. 113, 131 (1976). As stated in the text, to apply this rationale here would be to adopt a somewhat crabbed view of the purpose of the RLA minor dispute procedures. The Court noted that "Injunctions against strikes, even temporary injunctions, very often permanently settle the issue," 428 U.S. at 412, 96 S.Ct. at 3150. Not enjoining a sympathy strike may also, however, settle an issue for all prac-

(Continued on following page)

The requirement of arbitration under the RLA is an essential part of the congressional purpose of avoiding interruption of the transportation industry. *Chicago River, supra,* 353 U.S. at 40, 77 S.Ct. at 640; *Elgin, supra,* 325 U.S. at 724-727, 65 S.Ct. at 1290-1292; *Wien, supra* at 1145-46. The minor dispute arbitration procedure was designed as a substitute for prearbitration strikes, *cf. Chicago River, supra,* and we think this includes sympathy strikes of the character presented in this case. *See Detroit and T. Shoreline R.R. v. United Transportation Union,* 396 U.S. 142, 148, 90 S.Ct. 294, 298, 24 L.Ed.2d 325 (1969); *Texas and N.O.R.R. v. Brotherhood of Railway & Steamship Clerks,* 281 U.S. 548, 565, 50 S.Ct. 427, 432, 74 L.Ed. 1034 (1930). The legislative history of the RLA suggests an intent to prevent a dispute that involves a small number of transportation workers from disrupting the carrier's existing operations and its relations with other employees. It would be contrary to this objective to permit a sympathy strike before completion of the minor dispute mechanisms for determining the legitimacy of the strike. We therefore reject ALPA's argument that *Boys Markets* and other related cases declare the policies underlying the use of arbitration to be identical under the NLRA and the RLA.

[24-28] The policy of avoiding disruption of transportation businesses is not, of course, all encompassing. As we held above, a federal court under the RLA may not enjoin a strike plainly in breach of contract where the

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Footnote continued—
tical purposes. Thus, in some cases, if any meaningful relief is to be available, limited pre-arbitration judicial intervention will be necessary where the employer can show a strong likelihood of ultimately prevailing in its interpretation of the clause and the inadequacy of other remedies. In the RLA context we must take the risk of making this determination in order to make the statutory mechanism work.

major disputes mechanism of the Act have been used and exhausted. The policy is strong enough, however, to require that where a minor dispute exists the union must first establish its contractual right to engage in a sympathy strike before disrupting a carrier's operation. This does no more than preserve the status quo pending clarification of the parties' rights by statutory procedures. Maintenance of the status quo before and during major dispute procedures is required by the RLA. *See Detroit and T. Shoreline R.R., supra*; 45 U.S.C. § 156. Similarly where changes in the status quo are likely to lead to serious harm and threaten to disrupt the operation of the transportation carrier, injunctive relief is proper pending operation of the Act's minor dispute procedures. Maintenance of the status quo is of course, a traditional basis for equitable relief. *See, e.g., Brotherhood of Locomotive Engineers v. Missouri-K.-T.R.R.*, 363 U.S. 528, 532-35, 80 S.Ct. 1326, 1329-1330, 4 L.Ed.2d 1379 (1960); *Tanner Motor Livery Ltd. v. Avis, Inc.*, 316 F.2d 804, 808-9 (9th Cir.), *cert. denied*, 375 U.S. 821, 84 S.Ct. 59, 11 L.Ed.2d 55 (1963). Given the special concern of the RLA over continuous operation by carriers, it is appropriate to require the union to accept the status quo pending the arbitrator's decision. *See Smith, supra* at 340-49. *International Association of Machinists v. Street*, 367 U.S. 740, 771, 81 S.Ct. 1784, 1801, 6 L.Ed.2d 1141.

The preservation of the status quo is especially proper where failure to grant injunctive relief would make the arbitrator's ultimate decision a meaningless one. This was a consideration in *Missouri-K.-T.R.R., supra*. Upholding the action of the district court, which issued an injunction against a strike pending resolution of the minor dispute by the settlement mechanisms of the Act, the Court stated:

> From the point of view of these employees, the critical point in the dispute may be when the change is made, for, by the time of the frequently long-delayed Board decision, it might well be impossible to make them whole in any realistic sense. If this be so, the action of the district Judge, rather than defeating the Board's jurisdiction, would operate to preserve that jurisdiction by preventing injury so irreparable that a decision of the Board in the unions' favor would be but an empty victory.

363 U.S. at 534, 80 S.Ct. at 1330.

For these reasons we conclude that the district court had jurisdiction to enjoin the sympathy strike, in its entirety, pending determination of the contractual rights of the parties by the adjustment board.[13]

Although the district court had jurisdiction to enjoin the sympathy strike in its entirety, in light of the principles discussed in our opinion, relevant differences in the contract provisions of different groups of TIA employees may not have been considered as they should have been by the district court. In addition to the general and military no-strike clauses, the contract of the premerger TIA flight engineers and pilots contains a "picket line" clause which seems to permit the honoring of other employees' legal picket lines. Although the clause probably does not apply to the sympathy strike in this case,[14] the language would

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13. The employer must show it is entitled to an injunction under traditional equitable standards governing preliminary relief. *See Missouri-K.-T. R.R., supra,* 363 U.S. at 533-35, 63 S.Ct. at 1329-31; *Wien, supra.*

14. *See* note 9, *supra.* We doubt, however, that the primary strike in this case was "legal" as the word was used in subsection E of the agreement. Further, TIA argues the clause applies only to individual, not concerted, refusals to cross legal picket lines.

be a factor to consider in weighing the likelihood of the employer ultimately succeeding in its claim.[15]

SUMMARY

As to the primary strike, the order enjoining the strike of military flights is reversed and the order declining to enjoin the strike of nonmilitary strikes is affirmed.

As to the sympathy strike, the trial court's ruling that it had jurisdiction to enjoin the strike of military flights is affirmed. If the strike were still in force we would remand this aspect of the case to the trial court for further consideration of the propriety of the injunction in view of our discussion of *Buffalo Forge,* the RLA, and the standards for granting injunctive relief in this situation. The strike having ended, however, such further proceedings are not required. The order of the district court declining to enjoin the sympathy strike of nonmilitary flights on the ground of lack of jurisdiction is reversed.

Because of the contempt proceedings pending in the district court, a remand is appropriate. The pre-merged

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15. We recognize the theoretical possibility that the combination of our holdings regarding enjoinability of the primary and sympathy strike might lead employers to take curious actions. An employer seeking an injunction against a strike might attempt to argue that a clause which unambiguously prohibited the strike in question—so that there was no minor dispute to be arbitrated —was in fact unclear, so that minor dispute arbitration was necessary to determine its meaning and an injunction was appropriate pending such arbitration. We doubt that such behavior will be common, and we trust that the district courts are capable of disposing of any efforts to generate spurious minor disputes.

We caution that where, as is true in this case, the employer's likelihood of ultimately prevailing depends in large measure on construction of the parties' bargaining agreement, the district judge should be satisfied that the sympathy strike clearly violates the no-strike clause or a controlling provision of the RLA. *Cf. Buffalo Forge,* 428 U.S. at 431, 96 S.Ct. at 3158 (Stevens, J., dissenting); Gould, *On Labor Injunctions Pending Arbitration: Recasting Buffalo Forge,* 30 Stan.L.Rev. 533, 552 (1978).

TIA engineers were represented by the Teamsters, and the agreement quoted in footnote 11 was in force when the district court issued its injunctions and contempt orders in this case. The trial court will consider the question of the legal rights of the parties for the alleged contempt in light of the principles set forth herein, together with such other considerations as it may deem appropriate to a just determination of the case.

The orders of the district court are AFFIRMED in part, REVERSED in part, and the case REMANDED for further proceedings.

The parties shall bear their own costs for the appeals taken to this court.

WALLACE, Circuit Judge, dissenting in part:

I dissent from that part of the majority's decision which reverses the district court's injunction order against the primary strike activity directed at military flights. Although I am mindful of the post-impasse setting of this labor dispute and the general policies favoring the free play of economic forces when parties fail to reach agreement, I believe that this is one of those occasions when the general policies of the Norris-LaGuardia Act should give way to important countervailing policies embodied in the central provisions of the Railway Labor Act (RLA).

I

It has long been recognized "that Norris-LaGuardia does not invariably bar injunctive relief when necessary to achieve an important objective of some other statute in the pattern of labor laws." *Sinclair Refining Co. v. Atkinson,* 370 U.S. 195, 217, 82 S.Ct. 1328, 1340, 8 L.Ed.2d 440 (1962) (Brennan, J., dissenting). Specifically, the Supreme Court has held on several occasions that the anti-

injunction policy of Norris-LaGuardia will be overcome by the need to enforce a statutory duty arising under the RLA. *See, e. g., Chicago & N. W. Ry. v. United Transp. Union,* 402 U.S. 570, 91 S.Ct. 1731, 29 L.Ed.2d 187 (1971); *Brotherhood of R. R. Trainmen v. Howard,* 343 U.S. 768, 72 S.Ct. 1022, 96 L.Ed. 1283 (1952); *Graham v. Brotherhood of Locomotive Firemen & Enginemen,* 338 U.S. 232, 70 S.Ct. 14, 94 L.Ed. 22 (1949). The Court has stated that "the propriety of judicial enforcement [under the RLA] turns on the importance of the duty in the scheme of the Act, the capacity of courts to enforce it effectively, and the necessity for judicial enforcement if the right of the aggrieved party is not to prove illusory." *Chicago & N. W. Ry. v. United Transp. Union, supra,* 402 U.S. at 578, 91 S.Ct. at 1736. *See also International Ass'n of Machinists v. Street,* 367 U.S. 740, 772-73, 81 S.Ct. 1784, 1801-02, 6 L.Ed.2d 1141 (1961).

There is no question that, in general, the RLA is designed to avoid interruption of commerce by channeling the parties through various procedures designed to enhance the chances for agreement. As the majority observes, normally the exhaustion of the major dispute processes of the RLA frees the parties to flex their economic muscle. *See Brotherhood of R. R. Trainmen v. Jacksonville Terminal Co.,* 394 U.S. 369, 392, 89 S.Ct. 1109, 1123, 22 L.Ed.2d 344 (1969). For these reasons, an injunction in this setting must be justified by important considerations.

The majority acknowledges that the RLA does not preclude the parties from supplementing the statutory scheme by contract. Moreover, the majority has sustained the contract provision before us as consistent with the overall approach of the RLA. It is my view that the policies of the RLA are not exhausted when, as here, the parties have made clear provision for such a limitation on the weapons available in their own bargaining process.

Nor am I persuaded that Trans International Airlines (TIA) should be denied its bargain on the sole ground that the dispute, though involving a contract term and to that extent being in the nature of a minor dispute, occurred in a post-mediation setting of an underlying major dispute. The pointed limitation included in the statement of the Supreme Court relied on by the majority is of great importance:

> parties who have unsuccessfully exhausted the Railway Labor Act's procedures for resolution of a major dispute [may] employ the full range of whatever peaceful economic power they can muster, *so long as its use conflicts with no other obligation imposed by federal law.*

Brotherhood of R. R. Trainmen v. Jacksonville Terminal Co., supra, 394 U.S. 369, 392, 89 S.Ct. 1109, 1123, 22 L.Ed.2d 344 (emphasis added). I have concluded that the use of such power in this case does conflict with an important obligation under the RLA.

It is my view that this case should be governed by the reasoning set forth in *Seaboard World Airlines v. Transport Workers Union,* 425 F.2d 1086 (2d Cir. 1970). In *Seaboard,* the Second Circuit upheld an injunction of a strike called to pressure an employer into bargaining over topics not subject to reopening under the existing collective bargaining agreement. The court found that the union's attempt to breach the moratorium agreement amounted to a violation of its duty under section 2 First of the RLA "to exert every reasonable effort to make and *maintain agreements* concerning rates of pay, rules, and working conditions, and to settle all disputes . . in order to avoid any interruption to commerce or to the operation of any carrier . . . ." (Emphasis added.) *See id.* at 1091. It is the viola-

tion of this same duty to maintain agreements which TIA invokes as the ground for the injunction in this case.

Although the majority does not find *Seaboard* to be dispositive, I believe that the problem presented there is analogous to the one we face. In each setting, the relevant contract provision was intended to block the union from pursuing its grievances by means of economic pressure on the employer—in *Seaboard*, by forbidding the giving of a section 6 notice that would set in gear the major dispute procedures of the RLA; in the case before us by forbidding strike pressure against military flights even after the exhaustion of those procedures.[1] In each case, the union's primary defense was that the contract term was somehow inconsistent with the overall purposes of the RLA and hence inapplicable; Norris-LaGuardia's restrictions on injunctive relief provided the union's fallback position. In each setting, a strike injunction could have issued pending the RLA's mandatory arbitration procedures,[2] were it not for the fact that the minor dispute questioned the statutory validity of the contract provision rather than its intended meaning. *See id.* at 1090 (citing *Felter v. Southern Pacific*

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1. The majority asserts that the injunction in *Seaboard* simply required the union to abide by its agreement to limit the scope of the section 6 proceeding, thereby enabling the parties to complete required bargaining on other subjects. The opinion in *Seaboard*, however, makes it clear that the moratorium agreement foreclosed bargaining on all subjects and that no section 6 proceeding was pending. *Seaboard World Airlines, Inc. v. Transport Workers Union*, 425 F.2d 1086, 1087-88 (2d Cir. 1970). Rather than clearing the path for relevant negotiations, the injunction in *Seaboard* foreclosed union efforts to compel any negotiations.

2. The majority acknowledges that the strike issue here involved a minor dispute. I have found no relevant case deciding whether the post-contract setting of the dispute would preclude invocation of the mandatory arbitration procedures of the Act. It seems to me, however, that decisions requiring contractual arbitration in disputes over rights accrued under an expired agreement would be applicable to the statutory arbitration of the RLA. *See, e.g., Nolde Brothers, Inc. v. Local 358, Bakery Workers*, 430 U.S. 243, 97 S.Ct. 1067, 51 L.Ed.2d 300 (1977).

Co., 359 U.S. 326, 327-28, 79 S.Ct. 847, 850-51, 3 L.Ed.2d 854 (1959)).[3] The court in *Seaboard* reasoned, in part, that unions should not be free to strike in violation of contract terms pending resolution of the controversy merely because those terms are so clear as not to require the mandatory arbitration of the Act:

> From a practical standpoint we can see little difference between an anti-strike injunction pending interpretation by a board of adjustment whether a contract allowed reopening, as was approved in *Flight Engineers' Int'l Ass'n v. American Airlines, Inc.*, . . 303 F.2d 5 [(5 Cir. 1962)], and an injunction pending determination by a court whether a prohibition on reopening is illegal.

Id. at 1092. Similarly, I can see little practical difference between an injunction enforcing the arbitrator's decision that a strike was forbidden by the contract, despite an underlying major dispute, *see Buffalo Forge Co. v. United Steelworkers, AFL-CIO*, 428 U.S. 397, 405, 96 S.Ct. 3141, 3146, 49 L.Ed.2d 1022 (1976) (NLRA), and an injunction in support of a judicial determination that an anti-strike provision is not only clear, but also valid and binding under the Act.[4]

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3. As in *Seaboard*, the contract provision in the case before us is quite clear on its face. The union does not appear to argue that the contract clause in question was not intended to forbid strikes against military flights even after impasse. Rather, it contends that even such clauses may be changed unilaterally by self help when the procedures of the Act have been exhausted. As in *Seaboard*, jurisdiction to determine the validity of a contract provision under the RLA is thus properly invoked.

4. The majority contends that such a distinction between injunctions enforcing an arbitrator's decision and those in support of a judicial decision was adopted by the Supreme Court in *Buffalo Forge*. *See ante* at ..... The Court drew the distinction there because the policy supporting injunctive relief under the NLRA, encouragement of private agreements to arbitrate labor disputes, would be undermined by a decision granting courts authority to intrude on the exclusive jurisdiction of the arbitrator

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The majority does not disapprove of *Seaboard's* holding, nor does it appear to deny that the union in the case before us has breached its duty to exert reasonable efforts to "maintain agreements." The majority's main effort to distinguish the case amounts to restating the acknowledged fact that *Seaboard* involved the effect of contractual efforts to preclude a section 6 proceeding rather than efforts to specify permissible post-mediation measures. But this distinction does not explain why the union activity in *Seaboard* should constitute a more significant breach of the statutory duty to "maintain agreements" than occurred here, nor why injunctive relief was more appropriate there.[5] While the post-mediation setting is not irrelevant,

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Footnote continued—
by preliminarily resolving the merits of a contract dispute. But the majority itself reaches a different result, and I concur, on the same sympathy-strike issue as presented in *Buffalo Forge*, on the ground that the statutory arbitration of the RLA involves a broader policy against pre-arbitration strikes. *See infra* at ..... The case more nearly on point, *Seaboard*, relies on this same broad RLA policy against strikes pending resolution of a minor dispute, and concludes that it also applies to questions of statutory construction properly pending before a court. My extension of this reasoning to injunctions supporting the eventual resolution of the statutory issue is supported by the later Second Circuit decision upholding the issuance of a permanent injunction in that case. *Seaboard World Airlines, Inc. v. Transport Workers Union*, 443 F.2d 437 (2d Cir. 1971).

5. Another possible distinction is that a second anomaly would have resulted if injunctive relief against the strike was denied in the setting of *Seaboard*. Section 6 of the RLA forbids unions from striking prior to the completion of the RLA's major dispute procedures, and injunctive relief may support this statutory duty. The refusal to enjoin the strike in *Seaboard* would thus have appeared to grant greater rights to a union which wrongfully demanded that the employer negotiate new terms than to one which appropriately invoked section 6. *See Seaboard World Airlines, Inc. v. World Transport Workers Union, supra*, 425 F.2d at 1091-92. Even so, the union in *Seaboard* was not seeking to impose bargaining terms prior to negotiating with the employer, but merely refusing to maintain the prior agreement not to reopen the contract for bargaining. Apart from the alleged breach of the duty to "maintain agreements," the

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the fact that a minor dispute is also involved suggests that this distinction may not be decisive. The majority appears to conclude otherwise primarily by finding that only the violation of statutory duties bearing a "substantial nexus" to statutory dispute settlement procedures represent a "weighty statutory reason" for abrogating Norris-LaGuardia. See *ante* at ..... I turn next to that contention.

II

The Supreme Court has never stated that the only RLA duties important enough to justify injunctive relief despite Norris-LaGuardia are those that directly support dispute settlement procedures laid down by the Act. In fact, a number of leading Supreme Court decisions involve breach of the duty of fair representation of minority workers which the Court found implicit in the Act's overall scheme, a duty that does not directly support the Act's procedures for dispute resolution. *See, e. g., Graham v. Brotherhood of Locomotive Firemen & Enginemen, supra*, 338 U.S. 232, 70 S.Ct. 14, 94 L.Ed. 22. The majority thus incorrectly asserts that reversal is "compelled by the combination of the manner in which Congress and the RLA chose to reduce disruption in the transportation industry, and the controlling interpretations of the Norris-LaGuardia Act." See *ante* at ..... There simply is no controlling precedent in this case and we are thus forced to reconcile the demands of the RLA and Norris-LaGuardia.

Footnote continued—
union might well have contended that Norris-LaGuardia protected the use of economic pressure to convince the employer that changed circumstances required negotiation of new security provisions, notwithstanding such pressure was in breach of contract. It is significant that the court in *Seaboard* relied on the duty to "maintain agreements" rather than the status quo provision of section 6, the provision that serves to prevent the undermining of a section 6 proceeding by strike tactics.

Equally important, several prior cases upholding strike injunctions under the RLA can be adequately explained only by the general RLA policy of avoiding needless disruption of commerce and a corresponding policy of restricting the right to use economic pressure in a minor dispute. Such decisions, including our decision to reverse the district court's refusal to enjoin the sympathy strike against non-military flights, are not unrelated to the RLA's machinery for resolving disputes, but, at the same time, are not directly supportive of that machinery.

For example, in *Brotherhood of R.R. Trainmen v. Chicago River & Indiana R.R.*, 353 U.S. 30, 77 S.Ct. 635, 1 L.Ed.2d 622 (1957), the Supreme Court held that strikes could be enjoined pending the completion of the minor dispute procedures of the RLA. The Court stressed that strikes might force employers to succumb prior to the Adjustment Board's decision, thereby effectively depriving the Board of jurisdiction. *Id.* at 39, 77 S.Ct. at 639. *See also Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235, 252, 90 S.Ct. 1583, 1593, 26 L.Ed.2d 199 (1970). This reasoning explains the result in *Chicago River*, where the Court considered "controversies over the meaning of an existing collective bargaining agreement in a particular fact situation, generally involving only one employee," 353 U.S. at 33, 77 S.Ct. at 636, but it does not explain the application of the *Chicago River* doctrine to factual settings in which the underlying grievance will not be resolved by the arbitration in support of which injunctive relief is sought. The sympathy strike before us, the enjoining of which the majority affirms, involves an entire unit of employees refusing to cross the picket line of sister employees engaged in a post-mediation primary strike. Since the only arbitrable issue is the contractual legality of the strike itself, these employees are not merely required to resolve the underlying dispute in accordance with the statutory scheme, but are precluded from using their most effective weapon

pending resolution of the strike issue itself. The decision to enjoin thus preliminarily resolves the merits of the minor dispute over the applicability of the strike clause, arguably in derogation of the Adjustment Board's jurisdiction over that issue.

It was precisely the limited and indirect nature of the relationship between sypmathy strikes and the efficacy of a system of arbitration as the means of resolving disputes, that led the Supreme Court to limit the rule of *Boys Markets* to injunctions against strikes "over an arbitrable grievance." *Buffalo Forge Co. v. United Steelworkers, AFL-CIO, supra,* 428 U.S. at 407-08, 96 S.Ct. at 3147-48. The majority distinguishes *Buffalo Forge*, correctly I believe, by finding that "the minor dispute arbitration procedure [of the RLA] was designed as a substitute for pre-arbitration strikes." *See ante* at ..... Whereas under the NLRA the judicial role involves aiding private parties to resolve their disputes, which necessarily focuses concern on whether a particular rule may discourage parties from agreeing to arbitrate, the judicial role under the RLA involves the implementation of a statutory policy requiring the parties to use reasonable efforts to avoid disruption of commerce. The arbitration scheme is thus read to mean that there is no "right to strike" in a minor dispute setting. The traditional presumption that labor may use its full economic power gives way to a statutory scheme that avoids disruption of commerce by requiring the parties with an established relationship to settle minor disputes without resort to such power.

Despite its post-mediation setting, the union's strike against military flights also involves a minor dispute. That dispute should be resolved before the economic power of the parties is unleashed. The majority acknowledges the anomaly that if a no-strike clause in force during the life of the contract was ambiguous, a strike could be en-

joined pending the outcome of minor dispute arbitration. But the anomaly runs even deeper, for if the union had made a colorable claim that the contract clause before us did not intend to preclude post-mediation strikes, the strike could also have been enjoined pending arbitration even in its current setting. *See* note 2 *supra*. It is difficult to see why the availability of injunctive relief should turn exclusively on the clarity of the contract provision in question. Under these circumstances, the union should not be allowed to evade its contractual obligation simply by claiming it is invalid under the statute rather than not required by the contract. Thus, this situation presents an appropriate occasion for judicial enforcement of the duty contained in section 2 First of the RLA.

III

Having concluded that Norris-LaGuardia may give way to the need to enforce an important statutory duty, and that the duty to be enforced may be one that lends support to the statute's policy against disruption of commerce when there exists a minor dispute under the RLA, I turn now to several additional factors which persuade me that an injunction is appropriate here.

A.

I disagree with the majority's conclusion that upholding the injunction order here would grant courts a general power to police contracts under the RLA.[6] In the first

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6. *Cf. Buffalo Forge Co. v. United Steelworkers, AFL-CIO, supra*, 428 U.S. at 410, 96 S.Ct. at 3149 (arguing that sympathy strike injunction necessarily implies judicial authority to "enjoin any other alleged breach of contract pending the exhaustion of the applicable grievance and arbitration provisions"). As Justice Stevens observed in dissent in *Buffalo Forge*, however, such an argument merely assumes that accommodation means repeal. *See id.* at 422-23 n. 11, 96 S.Ct. at 3154-55 (Stevens, J., dissenting).

place, courts will almost always lack jurisdiction to do so because of the Adjustment Board's exclusive jurisdiction over disputes concerning the meaning of a contract. Moreover, since the section 2 First duty requires only "reasonable efforts" to "maintain agreements," it is doubtful that courts would find the breach of that duty where good faith disagreements over the meaning of a contract existed. Thus, there is little chance that courts would employ that duty as an excuse for preliminarily resolving disputes between the parties pending arbitration.

I also disagree with the majority's conclusion that one of the underlying purposes of Norris-LaGuardia was to limit the role of courts in enforcing labor contracts. See *ante* at ..... In *Chicago River, supra,* 353 U.S. 30, 77 S.Ct. 635, 1 L.Ed.2d 622, which the majority relies on for this assertion, the Supreme Court stated that Norris-LaGuardia was designed to correct the abuses that came when federal courts were "drawn into the field [of enjoining union activities] under the guise either of enforcing federal statutes, principally the Sherman Act, or through diversity of citizenship jurisdiction." *Id.* at 40, 77 S.Ct. at 640. The abuses under diversity jurisdiction came about not through judicial construction of collective bargaining agreements, but because of "the tendency of judges to enjoin concerted activities in accordance with 'doctrines of tort law which made the lawfulness of a strike depend upon judicial views of social and economic policy.' [Citation omitted.]" *Boys Markets, Inc. v. Retail Clerks Union, supra,* 398 U.S. at 253 n. 22, 90 S.Ct. at 1593 (quoting Report of Special *Atkinson-Sinclair* Committee, A.B.A. Labor Relations Law Section—Proceedings 226, 242 (1963)). On the other hand, "[w]here an injunction is used against a strike in breach of contract, the union is not subjected in this fashion to judicially created limitations on its freedom of action but is simply compelled to comply with limitations to which it has

previously agreed." *Id.* Ironically, the majority elsewhere acknowledges the plausibility of the argument that courts might enjoin unambiguous contract breaches without doing violence to any Norris-LaGuardia policy. See *ante* at .....

It is true, of course, that the Supreme Court has not read Taft-Hartley's section 301 jurisdiction as repealing Norris-LaGuardia as to disputes over the rights of the parties under a collective bargaining agreement. The Court refused to do so largely because "[i]n the course of enacting the Taft-Hartley Act, Congress rejected the proposal that the Norris-LaGuardia Act's prohibition against labor-dispute injunctions be lifted to the extent necessary to make injunctive remedies available in federal courts for the purpose of enforcing collective bargaining agreements." *Buffalo Forge Co. v. United Steelworkers, AFL-CIO, supra,* 428 U.S. at 409, 96 S.Ct. at 3148. Nevertheless, as the majority acknowledges, labor relations under the RLA developed along different lines than in other industries, and "[t]he fundamental premises and principles of the [RLA] are not the same as those which form the basis of the [NLRA] . . . ." *Brotherhood of R.R. Trainmen v. Chicago River & Ind. R.R., supra,* 353 U.S. at 31-32 n. 2, 77 S.Ct. at 636.

While I do not argue that Norris-LaGuardia is broadly repealed in every controversy relating to a collective bargaining agreement under the RLA, I am persuaded that, under these facts at least, it is appropriate to enjoin the union's clear breach of its contractual obligation. The union's violation of its statutory duty to "maintain agreements" takes this case outside the ambit of the Court's oft-repeated statement that "although a suit may be brought under § 301 against strikes which, while they are breaches of private contracts, *do not threaten any additional public policy,* in such cases the anti-injunction policy of Norris-LaGuardia should prevail." *Buffalo Forge Co. v. United Steelworkers, AFL-CIO, supra,* 428 U.S. at 409, 96 S.Ct.

at 3148 (quoting *Sinclair Refining Co. v. Atkinson, supra,* 370 U.S. at 225, 82 S.Ct. at 1344 (Brennan, J., dissenting)) (emphasis added). Like other statutory duties under the RLA, the violation of section 2 First does threaten an "additional public policy" and is thus enjoinable.

B.

I also disagree with the majority's conclusion that the policy of allowing the free play of economic forces in the post-mediation setting is unduly compromised by the district court's injunction. It should first be observed that the policy is not absolute. The majority acknowledges that the Supreme Court has sanctioned the enjoining of a post-mediation strike by a union which has violated its section 2 First duty "to exert reasonable efforts to make and maintain agreements" during the negotiating process. *Chicago & N.W. Ry. v. United Transp. Union, supra,* 402 U.S. at 571, 91 S.Ct. at 1732. Similarly, it is probable that a strike-injunction could issue pending the outcome of the binding arbitration required by the RLA's minor dispute provisions, even in a post-mediation setting. Finally, as the majority acknowledges, an injunction may issue to enforce an agreement by the parties to submit a major dispute to binding interest arbitration after the mechanisms of the Act are exhausted.

If a union may be compelled to honor its agreement to forego completely the use of economic weapons pending interest arbitration consistent with the policies underlying the RLA and Norris-LaGuardia, it is not clear why they cannot be compelled to honor their commitment to limit the use of such weapons consistent with a narrowly tailored contract provision and their responsibility under section 2 First of the RLA. Indeed, I am convinced of the propriety of this injunction order in part because, like the examples alluded to above, an injunction here would constitute a

very narrow exception to the general policy of permitting strikes when negotiations have failed to produce agreement. Allowing an injunction here would not "provide a cover for freewheeling judicial interference in labor relations of the sort that called forth the Norris-LaGuardia Act in the first place." *Id.* at 583, 91 S.Ct. at 1738.

It is significant that, as the majority observes, "in this case the military no-strike clause was directed to the discrete transportation function of military flights, the union retaining the right to strike other TIA flights." See *ante* at ..... Specific enforcement of the duty to maintain agreements in this setting does not, like the labor injunctions which led to passage of Norris-LaGuardia, leave the union without alternatives for pressing its demands. *Cf. Brotherhood of R.R. Trainmen v. Chicago River & Ind. R.R., supra,* 353 U.S. at 41, 77 S.Ct. at 640 (injunction pending outcome of arbitration justified in part because it does not strip labor of its primary weapon without substituting any reasonable alternative). The determination whether section 2 First would sustain an injunction against breach of a provision forbidding all strike activity even after mediation has failed to produce agreement may await a later case. *See Seaboard World Airlines v. Transport Workers Union, supra,* 425 F.2d at 1091 (emphasizing that its determination of the propriety of injunctive relief involved a spectrum, but finding such relief in that case "still . . . withdrawn from the prohibitions of the Norris-LaGuardia Act").

C.

Finally, in reconciling the policies of Norris-LaGuardia and the RLA, I would put considerable weight on the unique and important governmental interest in avoiding disruption of military flights. This contract provision was required as a condition for obtaining military contracts, re-

flecting the federal government's belief that such a provision has significance for the nation's security. Here we are dealing with interests that, in a time of emergency, can be essential to our nation's survival. When the union's strike activity clearly violates a contract provision designed to prevent disruption of such a vital part of the nation's military transportation system, an object which goes to the heart of the concerns that distinguish the RLA in the scheme of the nation's labor laws, it behooves us to consider carefully whether section 2 First may not adequately support judicial efforts to see that such a clause is not blatantly ignored.

Under these circumstances I would affirm.

(Filed March 14, 1980)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nos. 77-3362
77-3363
77-3395
77-3781

TRANS INTERNATIONAL AIRLINES, INC.,
Plaintiff-Cross-Appellant,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, etc., AIRLINE DIVISION TEAMSTER LOCAL 2707; MARVIN G. GRISWOLD; TEAMSTER LOCAL 732,
Defendants-Cross-Appellees.

Nos. 78-1148
78-1232

TRANS INTERNATIONAL AIRLINES, INC.,
Plaintiff-Appellee/Cross Appellant,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al., AIRLINE DIVISION, TEAMSTERS LOCAL 2707, and AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, AFL-CIO,
Defendants-Appellants/Cross Appellees.

ORDER

Before: GOODWIN, WALLACE, and KENNEDY, Circuit Judges.

The panel has voted to amend the opinion filed on February 14, 1980 as follows (pages references are to slip opinion):

At page 2056, left hand column, on line 7, after the words "to permit an injunction to issue.", add the following language:

> The result contended for by TIA and Judge Wallace in his thoughtful opinion would mean that a federal court has radically different powers to enjoin a strike which clearly violates language in the collective bargaining agreement, depending on whether the controlling statute is the NLRA or the RLA. Admitting the different genesis of the RLA, *see Chicago River, supra* at 31-32 n.2, we do not think the statutory policies are sufficiently distinct to justify such different application of the Norris-LaGuardia Act's anti-injunction mandate.

At page 2057, right hand column, at the end of the first full paragraph after the words "of the Norris-LaGuardia Act.", please add the following:

> Judge Wallace, dissenting in part, contends that he "can see little practical difference between an injunction enforcing the arbitrator's decision that a strike was forbidden by the contract, despite an underlying major dispute, and an injunction in support of a judicial determination that an anti-strike provision is not only clear, but also valid and binding under the Act." Dissent slip op. at 7 (footnote omitted). Yet this is precisely the distinction which the Supreme Court adopted in the very case cited by Judge Wallace, *Buffalo Forge*. *See* 428 U.S. at 404-12, *especially* at 409.

(Filed June 2, 1980)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nos. 77-3362
77-3363
77-3395
77-3781

TRANS INTERNATIONAL AIRLINES, INC.,
Plaintiff-Cross-Appellant,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, etc., AIRLINE DIVISION TEAMSTER LOCAL 2707; MARVIN G. GRISWOLD; TEAMSTER LOCAL 732,
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Nos. 77-1148
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INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al., AIRLINE DIVISION, TEAMSTERS LOCAL 2707, and AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, AFL-CIO,
Defendants-Appellants/Cross-Appellees.

ORDER

Before: GOODWIN, WALLACE, and KENNEDY, Circuit Judges.

The opinion filed February 14, 1980, shall be amended as follows (page references are to slip opinion):

At page 2046, the fourth word of the first full paragraph on the right-hand column is deleted and the word "enjoining" inserted in its place.

At page 2060, right-hand column, line 13, add language as follows after the word "operation" (followed by a comma):

> "at least where traditional standards governing preliminary relief are met.[13]"

Delete the language of footnote 13 and substitute the following:

> We emphasize that where, as is true in this case, the employer's likelihood of ultimately prevailing depends in large measure on construction of the parties' bargaining agreement, the district judge should be satisfied that the sympathy strike clearly violates the no-strike clause or a controlling provision of the RLA.
>
> In light of our disposition, it is unnecessary for us to consider in detail TIA's argument that regardless of any contract provisions, all sympathy strikes may be enjoined as violating policies expressed in the RLA. *See* Chicago & Illinois Midland Ry. v. Brotherhood of Railroad Trainmen, 315 F.2d 771 (7th Cir.), *vacated as moot,* 375 U.S. 18 (1963). *Compare* Brotherhood of Railroad Trainmen v. Atlantic Coast Line R. R., 362 F.2d 649 (5th Cir.), *aff'd by an equally divided court,* 385 U.S. 20 (1966); Brotherhood of Locomotive Firemen and Enginemen v. Florida East Coast Ry., 346 F.2d 673 (5th Cir. 1965).

At page 2061, right-hand column, delete last paragraph of footnote 15.

The dissent shall be amended as follows: to add "unqualified" after "no" and before "'right to strike'" at 2067, column 1, 3rd full sentence; and add ", at least where traditional standards of equity are met" to that sentence.

APPENDIX E

(Filed June 27, 1980)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nos. 77-3362
77-3363
77-3395
77-3781

TRANS INTERNATIONAL AIRLINES, INC.,
Plaintiff-Cross-Appellant,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, etc., AIRLINE DIVISION TEAMSTER LOCAL 2707; MARVIN G. GRISWOLD; TEAMSTER LOCAL 732,
Defendants-Cross-Appellees.

Nos. 78-1148
78-1232

TRANS INTERNATIONAL AIRLINES, INC.,
Plaintiff-Appellee/Cross-Appellant,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al., AIRLINE DIVISION, TEAMSTERS LOCAL 2707, and AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, AFL-CIO,
Defendants-Appellants/Cross-Appellees.

ORDER

Before: GOODWIN, WALLACE, and KENNEDY, Circuit Judges.

The panel as constituted in the above case has voted to deny the petition for rehearing and to reject the suggestion for a rehearing en banc.

The full court has been advised of the suggestion for en banc rehearing, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

In response to the petition for rehearing, Judge Goodwin files the following statement:

> I would modify the majority opinion to hold that a sympathy strike is a major dispute if the work stoppage with which the sympathy strike is allied is a major dispute. I do not read the Railway Labor Act cases as extending to major disputes the power to enjoin.

APPENDIX F

PRE-MERGER TIA FLIGHT ATTENDANTS

(Agreement of July 21, 1974)

ARTICLE XII

No Strike—No Lockout

Section A. During the term of this Agreement, the Union shall not authorize, cause, sanction or engage in any strike, picketing, slowdown or stoppage of work.

Section B. During the term of this Agreement, the Company shall not cause, permit, or engage in any lockout of its Flight Attendants.

Section C. During the term of this Agreement, the Company reserves the right to discharge or otherwise discipline any Flight Attendant taking part in any strike, picketing, slowdown or stoppage of work.

Section D. The Union further agrees that the Flight Attendants will continue to perform all duties which are necessary to enable the Company to operate flights for or in support of traffic sponsored by the Department of Defense of the United States of America, even though such Flight Attendants withdraw from commercial airline service because of a dispute arising out of negotiations for a new contract after the expiration date of this Agreement and/or during and after all procedures of the Railway Labor Act have been exhausted, provided the Company shall submit to the Union, when requested, proof that a particular flight is being flown or operated under charter or contract to the Department of Defense.

Section E. It shall not be a violation of this Agreement, and it shall not be cause for discharge or disciplinary

action in the event a Flight Attendant refuses to go through or work behind a legal primary picket line maintained by the Union in connection with a dispute between the Company and the Union involving any flight personnel represented by the Union.

PRE-MERGER TIA FLIGHT ENGINEERS AND PILOTS

(Agreement of July 21, 1974)

"SECTION 21

A. [General No Strike Clause] During the term of this Agreement, the Union shall not authorize, cause, sanction or engage in any strike, picketing, slowdown or stoppage of work.

. . .

D. [Military No Strike Clause] The Union further agrees that the Crewmembers will continue to perform all duties which are necessary to enable the Company to operate flights for or in support of traffic sponsored by the Department of Defense of the United States of America, even though such Crewmembers withdraw from commercial airline service because of a dispute arising out of negotiations for a new contract after the expiration date of this Agreement and/or during and after all procedures of the Railway Labor Act have been exhausted, . . .

E. [Picket Line Clause] It shall not be a violation of this Agreement, and it shall not be a cause for discharge or disciplinary action in the event a Crewmember refuses to go through or work behind a legal primary picket line maintained by the Union in connection with a dispute between the Company and the Union involving any flight personnel represented by the Union."

FORMER SATURN FLIGHT ENGINEERS

(Agreement of November 17, 1974)

"Section 24

. . .

L. [General No Strike Clause] The Company will not lockout any employees covered by this Agreement and the Union and its members, individually and collectively, agree that they will not authorize or take part in any strike or picketing at the Company's premises during the life of this Agreement, until the procedures for settling disputes involving employees covered by this Agreement, as provided for by the Railway Labor Act, have been exhausted by both parties.

. . .

P. [Military No Strike Clause] Conduct of Military Operations—It is mutually agreed that during the term of the Agreement between the Company and its Flight Engineers as represented by the Union, that the Flight Engineers will not engage in any strike or work stoppage on purely military operations conducted by the Company."

APPENDIX G

Employee Representation on the Trunk Carriers and the Members of AIR Conference*

Carrier	Craft or Class (or other grouping)	Union
Air New England**	Pilots	ALPA
	Flight Attendants	SEIU
	Mechanics & Related	IAM
Alaska Airlines**	Pilots	ALPA
	Flight Dispatchers	IAM
	Flight Attendants	AFA
	Mechanics, Stock Clerks, Ramp Servicemen	IAM
	Clerical, Office, Fleet and Passenger Service	IAM
Aloha Airlines**	Pilots	ALPA
	Flight Dispatchers	TWU
	Flight Attendants	AFA
	Mechanics, Stores and Ramp Service	IAM
	Clerical, Office, Fleet and Passenger Service	IAM

*This table is derived from the National Mediation Board Index to Current Airlines' Contracts File (dated July 10, 1975) and updated by other National Mediation Board certifications and collective bargaining contracts on file at the National Mediation Board through December 31, 1977.

**Member of AIR Conference.

Carrier	Craft or Class (or other grouping)	Union
American Airlines**	Pilots	APA
	Flight Engineers	FEIA
	Flight Dispatchers	TWU
	Flight Attendants	APFA
	Communication Employees	TWU
	Mechanics	TWU
	Stock Clerks	TWU
	Meteorologists	TWU
	Guards	IAM
Braniff Airlines	Pilots	ALPA
	Flight Dispatchers	ATDA
	Flight Attendants	AFA
	Radio and Teletype Operators, Clerical, Office, Stores, Fleet and Passenger Service	IBT
	Mechanics	IAM
	Hostess Fashion Shop	IAM
	Maintenance Technician	IAM
Continental Air Lines**	Pilots	ALPA
	Flight Dispatchers	TWU
	Flight Attendants	UFA
	Mechanics, Stock Clerks, Guards, Commissary Employees	IAM

Carrier	Craft or Class (or other grouping)	Union
Delta Airlines	Pilots	ALPA
	Aircraft Dispatchers	PAFCA
Eastern Air Lines**	Pilots	ALPA
	Flight Dispatchers	IAM
	Flight Attendants	TWU
	Radio and Teletype	IAM
	Mechanics, Stock Clerks, Cargo Handlers, Print Shop and Commissary Clerks	IAM
	Meteorologist	TWU
	Flight Operations Ground School Instructors	IAM
	Nurses	IBT
	Guards	IAM
	Instructor, Technical and Regional	IBT
The Flying Tiger Line**	Pilots	ALPA
	Flight Dispatcher	IAM
	Mechanics and Stock Clerks	IBT
	Guards	IAM
	Ramp Servicemen	IAM
Frontier Airlines**	Pilots	ALPA
	Flight Dispatchers	TWU
	Flight Attendants	ALPA

Carrier	Craft or Class (or other grouping)	Union
	Mechanics and Stock Clerks	IAM
	Clerical, Office and Station	ALEA
Hawaiian Airlines**	Pilots	ALPA
	Flight Dispatchers	TWU
	Flight Attendants	AFA
	Communications Employees	HACE
	Mechanics	IAM
	Clerical, Office, Stores, Fleet and Passenger Service	IAM
Hughes Airwest**	Pilots	ALPA
	Flight Dispatchers	TWU
	Flight Attendants	AFA
	Mechanics	AMFA
	Clerical, Office, Fleet and Passenger Service	ALEA
	Supply Clerks	IAM
National Airlines**	Pilots	ALPA
	Flight Engineers	FEIA
	Flight Dispatchers	TWU
	Flight Attendants	TWU
	Radio and Teletype	IBT

Carrier	Craft or Class (or other grouping)	Union
	Mechanics and Stockroom Employees	IAM
	Clerical, Office, Fleet and Passenger Service	ALEA
North Central Airlines**	Pilots	ALPA
	Flight Dispatchers	TWU
	Flight Attendants	ALPA
	Mechanics and Stock Clerks	IAM
	Clerical, Office, Fleet and Passenger Service	ALEA
	Mechanical Supervisors	AASA
Northwest Airlines**	Pilots	ALPA
	Flight Dispatchers	TWU
	Flight Attendants	IBT
	Radio and Teletype	TWU
	Mechanics and Stock Clerks	IAM
	Clerical, Office, Fleet and Passenger Service	BRAC
	Flight Kitchen	IAM
	Flight Kitchen (Anchorage, Alaska)	IAM
	Meteorologists	NWAMA
	Guards	IAM
	Senior Foremen and Foremen	NWAFA

Carrier	Craft or Class (or other grouping)	Union
	Flight Simulator Operators, Link Trainer Operators, Flight Duplication Instructors	ALEA
	Instructors, Production Planners, Service Engineers, Service Analysts, Simulator Technicians, Technical Writers	NWAFA
Ozark Air Lines**	Pilots	ALPA
	Flight Dispatchers	TWU
	Flight Attendants	ALPA
	Teletype	IBT
	Mechanics	AFMA
	Clerical, Office, Fleet and Passenger Service	IAM
	Stock and Stores	IBT
Pan American World Airways	Pilots	ALPA
	Flight Engineers	FEIA
	Flight Dispatchers	TWU
	Flight Attendants	IUFA
	Mechanics	TWU
	Mechanics (Eastern Test Range)	TWU
	Mechanics (Kennedy Space Center)	TWU
	Clerical and Related	IBT

Carrier	Craft or Class (or other grouping)	Union
	Clerical and Related (Eastern Test Range)	IBT
	Clerical and Related (Occupational Medicine and Environmental Health Services Project)	IBT
	Service Supply Clerks	IBT
	Service Supply Clerks (Eastern Test Range)	IBT
	Service Supply Clerks (Kennedy Space Center)	IBT
	Commissary Employees (Cape Kennedy)	TWU
	Commissary Employees (New York Area)	TWU
	Commissary Employees (West Coast)	TWU
	Nurses (Occupational Medicine and Environmental Health Services Project)	IBT
	Nurses	IBT
	Port Stewards	TWU
	Building Service Employees	SEIU
	Operations Training Instructors	FEIA

Carrier	Craft or Class (or other grouping)	Union
	Building Maintenance Engineers	IUOE
	Medical and Environmental Technicians	TWU
	Flight Specialist/ Balloon Watcher, Flight Specialist/ Rigger and Flight Specialist	IBEW
	Guards	UPGWA
Piedmont Airlines**	Pilots	ALPA
	Flight Dispatchers	TWU
	Flight Attendants	ALPA
	Mechanics	IAM
	Stock and Stores	IAM
Reeve Aleutian Airways**	Pilots	ALPA
	Flight Dispatchers	IBT
	Flight Attendants	IBT
	Stock Clerks	IBT
	Flight Kitchen	IBT
Texas International Airlines**	Pilots	ALPA
	Flight Dispatchers	TWU
	Flight Attendants	AFA
	Mechanics and Stock Clerks	IAM
	Clerical, Office, Fleet and Passenger Service	ALEA

Carrier	Craft or Class (or other grouping)	Union
Trans World Airlines**	Pilots	ALPA
	Flight Dispatchers	TWU
	Flight Attendants	IFFA
	Teletype	IAM
	Mechanics, Cargo, Commissary, Stock, Fire Inspectors, Guards	IAM
	Food Unit Employees	IAM
	Meteorologists	TWU
United Airlines**	Pilots	ALPA
	Flight Dispatchers	IAM
	Flight Attendants	AFA
	Flight Navigators	TWU
	Radio and Teletype	IAM
	Mechanics	IAM
	Flight Kitchen and Commissary	IAM
	Meteorologists	TWU
	Guards	IAM
	Flight Simulator and Link Trainer Operators	ALEA
	Ramp, Stores, Vehicle Driver	IAM

Carrier	Craft or Class (or other grouping)	Union
Western Airlines**	Pilots	ALPA
	Flight Superintendents	TWU
	Flight Attendants	ALPA
	Clerical, Office, Fleet and Passenger Service	BRAC
	Mechanics	IBT
	Stock and Stores	IBT
Wien Air Alaska**	Pilots	ALPA
	Flight Dispatchers	IBT
	Flight Attendants	IBT
	Mechanics	IBT
	Clerical, Office, Fleet and Passenger Service	IBT
	Stock Clerks	IBT

Abbreviations

AASA – American Airway Supervisors Association
AFA – Association of Flight Attendants
ALEA – Air Line Employees Association, International
ALPA – Air Line Pilots Association
AMFA – Aircraft Mechanics Fraternal Association
APA – Allied Pilots Association
APFA – Association of Professional Flight Attendants
ATDA – Air Transport Dispatchers Association
BRAC – Brotherhood of Railway, Airline and Steamship Clerks

FEIA – Flight Engineers International Association

HACE – Hawaiian Airlines Communication Employees

IAM – International Association of Machinists and Aerospace Workers

IBEW – International Brotherhood of Electrical Workers

IBT – International Brotherhood of Teamsters

IFFA – Independent Federation of Flight Attendants

IUFA – Independent Union of Flight Attendants

IUOE – International Union Operating Engineers

NWAFA – Northwest Airlines Foremen's Association

NWAMA – Northwest Airline Meteorologists Association

PAFCA – Professional Airline Flight Control Association

SEIU – Service Employees' International Union

TWU – Transport Workers Union of America

UFA – Union of Flight Attendants

UPGWA – United Plant Ground Workers of America

Supreme Court, U. S.
FILED
OCT 24 1980
MICHAEL RODAK, JR., CLERK

No. 80-480

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

TRANS INTERNATIONAL AIRLINES, INC.,
Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AIRLINE DIVISION; TEAMSTERS LOCAL 2707; MARVIN L. GRISWOLD; TEAMSTERS LOCAL 732; AND AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, AFL-CIO,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Did the district court lack jurisdiction under the Norris-LaGuardia Act to enforce specifically a military no-strike clause by enjoining a strike undertaken in the course of a major dispute after the mandatory procedures of the Railway Labor Act had been exhausted?

2. Do the major dispute procedures of the Railway Labor Act prohibit employees from sympathetically honoring picket lines established by another employee craft, where their sympathetic action is engaged in solely to support the bargaining position of the other craft, and there is no underlying dispute between the sympathizing employees and the common employer?

TABLE OF CONTENTS

	Page
Opinions Below	1
Jurisdiction	2
Statutory Provisions Involved	2, 1a
Statement Of The Case	2
Decisions Of The District Court	4
Developments Pending Appeal	6
Decision Of The Court Of Appeals	6
Reasons For Denying The Writ	9
I. The Decision Of The Court Below, Denying Specific Enforcement To The Military No-Strike Clause, Follows This Court's Well-Established Precedents, Conforms To The Decisions Of Other Circuit Courts, And Deals With An Issue Likely To Be Of Historical Interest Only	9
A. The Lower Court Correctly Refused To Allow Enforcement Of The Military No-Strike Clause By Injunctive Order	9
B. There Is No Conflict Of Decision	14
C. The Military No-Strike Issue Does Not Raise An Important Question Of Federal Law	16
II. The RLA's Major Dispute Provisions Do Not Bar Employees From Engaging In Sympathetic Action, And The Petition Presents No Substantial Reason Why This Question, Which Was Not Ruled On Below, Should Now Be Decided	17
Conclusion	20

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TABLE OF AUTHORITIES

CASES: Page

BLE v. *Baltimore & O. R.R.*, 372 U.S. 284 (1963).. 9
BLFE v. *Florida E. Coast Ry.*, 346 F.2d 673 (5th Cir. 1965) 18
Boys Markets, Inc. v. *Retail Clerks*, 398 U.S. 235 (1970) 11
BRT v. *Atlantic Coast Line R.R.*, 362 F.2d 649 (5th Cir.), *aff'd by an equally divided court*, 385 U.S. 20 (1966) 18
BRT v. *Chicago River & I. R.R.*, 353 U.S. 30 (1957) 11
BRT v. *Jacksonville Terminal Co.*, 394 U.S. 369 (1969) 9, 10, 18, 19
Buffalo Forge Co. v. *USW*, 428 U.S. 397 (1976).. 5, 7, 11, 17
Chicago & Ill. Midland Ry. v. *BRT*, 315 F.2d 771 (7th Cir.), *vacated as moot*, 375 U.S. 18 (1963).. 18
Chicago & N.W. Ry. v. *UTU*, 402 U.S. 570 (1971).. 13
Coca Cola Bottling Co. v. *Teamsters Local 326*, 104 L.R.R.M. 2776 (3d Cir. 1980) 19, 20
Detroit & Toledo Shore Line R.R. v. *UTU*, 396 U.S. 142 (1969) 12, 18
Eastern Air Lines, Inc. v. *FEIA*, 340 F.2d 104 (5th Cir.), *cert. denied*, 382 U.S. 811 (1965).... 10, 14, 18, 19
Elgin, J. & E. R.R. v. *Burley*, 325 U.S. 711 (1945).. 9
Gary Hobart Water Corp. v. *NLRB*, 511 F.2d 284 (7th Cir.), *cert. denied*, 423 U.S. 925 (1975).... 20
General Committee v. *Missouri-Kansas-Texas R.R.*, 320 U.S. 323 (1943) 10
Gompers v. *Buck's Stove & Range Co.*, 221 U.S. 418 (1911) 9
Japan Air Lines Co. v. *IAM*, 538 F.2d 46 (2d Cir. 1976) 15
W. L. Mead, Inc. v. *IBT*, 217 F.2d 6 (1st Cir. 1954), *cert. dismissed*, 352 U.S. 802 (1956)..... 10, 14
NLRB v. *C. K. Smith & Co.*, 569 F.2d 162 (1st Cir. 1977), *cert. denied*, 436 U.S. 957 (1978)..... 20
Pan American World Airways v. *FEIA*, 306 F.2d 840 (2d Cir. 1962) 10, 14, 19

TABLE OF AUTHORITIES—Continued

	Page
Piedmont Aviation, Inc. v. *ALPA*, 416 F.2d 633 (4th Cir. 1969), *cert. denied*, 397 U.S. 926 (1970)	13
Pullman Co. v. *Order of Ry. Conductors*, 316 F.2d 556 (7th Cir.), *cert. denied*, 375 U.S. 820 (1963)	15
Railroad Telegraphers v. *Chicago & N.W. Ry.*, 362 U.S. 330 (1960)	10
Railway Clerks v. *Florida E. Coast Ry.*, 384 U.S. 238 (1966)	9
Seaboard World Airlines, Inc. v. *TWU*, 425 F.2d 1086 (1970), *adhered to on further consideration*, 443 F.2d 437 (2d Cir. 1971)	14, 15, 16
Sinclair Refining Co. v. *Atkinson*, 370 U.S. 195 (1962)	11
Singleton v. *Wulff*, 428 U.S. 106 (1976)	17
Union Pac. R.R. v. *Sheehan*, 439 U.S. 89 (1978), *rehearing denied*, 439 U.S. 1135 (1979)	14
United States v. *Munsingwear*, 340 U.S. 36 (1950)	9
Youakin v. *Miller*, 425 U.S. 231 (1976)	17
STATUTES:	
Labor Management Relations Act of 1947, 29 U.S.C. § 185	9
National Labor Relations Act, 29 U.S.C. § 158	13
Norris-LaGuardia Act, 29 U.S.C. § 101, *et seq.*	2
29 U.S.C. § 104	5, 7, 10
Railway Labor Act, 45 U.S.C. § 151, *et seq.*	2
45 U.S.C. § 152, First	4, 9, 12, 13, 14, 16
45 U.S.C. § 155	4, 12, 18
45 U.S.C. § 156	4, 12, 14, 15, 16, 18
45 U.S.C. § 157	14
45 U.S.C. § 158(n)	14
45 U.S.C. § 159, Second	14
45 U.S.C. § 160	12, 18
OTHER AUTHORITIES:	
H. Rep. No. 1944, 73rd Cong., 2d Sess. (1934)	10
F. Frankfurter & N. Greene, *The Labor Injunction* (1930)	11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 80-480

TRANS INTERNATIONAL AIRLINES, INC.,
Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AIRLINE DIVISION; TEAMSTERS LOCAL 2707; MARVIN L. GRISWOLD; TEAMSTERS LOCAL 732; AND AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, AFL-CIO,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The memorandum opinion and order of the United States District Court for the Northern District of California (Pet. App. A),[1] enjoining the primary strike

[1] References to pages in the appendix to the petition are designated "Pet. App.," while references in the appendix to this opposition brief are designated "Resp. App."

against military flights, are not officially reported but can be found at 96 L.R.R.M. 2763. The district court's memorandum opinion and order (Pet. App. B), enjoining sympathetic action affecting military flights but otherwise declining preliminary injunctive relief, is reported at 439 F. Supp. 184 and can be found at 96 L.R.R.M. 2766. The modified opinion of the United States Court of Appeals for the Ninth Circuit (Pet. App. D) is unreported, as is the court's denial of rehearing (Pet. App. E); both are set forth in the appendix to the petition.

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

STATUTORY PROVISIONS INVOLVED

Pertinent provisions of the Railway Labor Act (RLA), 45 U.S.C. § 151, *et seq.*, and the Norris-LaGuardia Act, 29 U.S.C. § 101, *et seq.*, are set forth in the petition, at 3, and in the appendix to this opposition brief (Resp. App., at A-1).

STATEMENT OF THE CASE

Trans International Airlines, Inc. (TIA), the petitioner, is the corporate survivor of a merger between TIA and Saturn Airways, Inc., which was effectuated on November 30, 1976. When this action was initiated on September 7, 1977, TIA's flight attendants and flight engineers were represented by the Teamsters, and the pilots on the post-merger carrier were represented by the Air Line Pilots Association (ALPA). Separate collective-bargaining agreements were in effect covering the former Saturn engineers and pilots. TIA's engineers and pilots

were covered by a pre-merger Crewmember Agreement,[2] while the TIA and Saturn flight attendants were covered, until September 8, 1977, by the pre-merger TIA Flight Attendant Agreement.

The major contract dispute out of which this litigation arose began with service of the Teamsters' § 6 Notice, dated January 9, 1976, advising TIA that the flight attendants intended to negotiate changes in their rates of pay, rules and working conditions. Conferences between the parties and efforts by the National Mediation Board to achieve settlement were unsuccessful. On August 8, 1977, concluding that mediation had failed, the Board released the parties to their self-help remedies. Efforts to reach settlement during the ensuing 30-day "cooling-off" period also failed. Therefore, a strike was called for September 8, 1977.

On the last day of the "cooling-off" period, September 7, TIA filed two actions for injunctive relief.[3] The first complaint sought an injunction against the primary strike by the flight attendants, alleging that the Teamsters had bargained in bad faith; that strike action was foreclosed under the Order of the Civil Aeronautics Board (CAB) approving the TIA-Saturn merger; and that a strike against military operations would violate the military no-strike clause in the expired Flight Attendant Agreement (Pet. App. F, at A-85). This clause

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[2] TIA's pilots were represented by the Teamsters until December, 1976, when they selected ALPA as their representative.

[3] Case No. C-77-2010 enjoining the flight attendants from striking military flights, an order the Teamsters appealed (No. 77-3362), and declining to enjoin the strike against commercial flights, an order the carrier cross-appealed (Nos. 77-3395, 77-3781). Case No. C-77-2011 enjoining the flight engineers and pilots with respect to military flights from which order the Teamsters (No. 77-3363) and ALPA (No. 78-1148) appealed, and refusing injunctive relief with respect to commercial flights from which order TIA cross-appealed (Nos. 77-3395, 77-3781, 78-1232).

appeared in the Agreement due to a policy of the Military Airlift Command (MAC) of encouraging its contractors to negotiate "no work stoppage" agreements covering military operations. The Department of the Air Force has since abandoned this policy; thus, MAC's standard Request for Proposals no longer requires or recommends "no work stoppage" agreements between air carrier contractors and their employees.

The second case was brought against the Teamsters and ALPA. Preliminary injunctive relief was requested to prevent TIA's flight engineers and pilots from honoring the flight attendants' picket lines pending arbitration of the question whether such sympathetic action was contractually permissible.[4] Alternatively, TIA contended that the flight engineers and pilots were disabled from respecting the flight attendants' picket lines by the status quo provisions of the RLA (§§ 2, First, 5 and 6).

Decisions Of The District Court

Upon TIA's motion, the district court temporarily restrained all strike activity (Pet. App., at A-2, -10). The following day, September 8, the court limited the prohibitions of its temporary restraining order against the flight attendants to their interference with military flights. The flight engineers were temporarily restrained from interfering with all military flights and TIA's cargo operations (Pet. App., at A-2, -10). The union secured its members' compliance with the temporary restraining orders. Contrary to the petition, at 4-5, no sanctioned strike activity occurred prior to September 10, when only TIA's commercial business was struck.

The preliminary injunction hearing was held on September 15, 1977. Thereafter, the district court declined

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[4] The contract clauses in issue are reprinted in the petition (Pet. App. F).

to enjoin the flight attendants from striking TIA's commercial operations, holding that the case was controlled by RLA principles rather than the CAB's Order, and that the Teamsters Union had not violated its bargaining obligations under § 2, First of the Act. A preliminary injunction was issued against any strike affecting military flights on the basis of a military no-strike clause in the pre-merger TIA flight attendant agreement. Similarly, injunctions to prevent the flight engineers and pilots from respecting the flight attendants' picket lines around commercial flights were denied, whereas sympathetic action affecting military flights was enjoined. Relying on *Buffalo Forge Co.* v. *USW*, 428 U.S. 397 (1976), the court held that the Norris-LaGuardia Act, 29 U.S.C. § 104, prohibits issuance of an injunction against sympathetic action, where the underlying issue (the primary strike) is not arbitrable.

Buffalo Forge is applicable in the RLA context, the court reasoned, because sympathetic action is associated with a related major dispute in which self-help is permissible. Disputes caused by respect for fellow employees' picket lines have elements in common with major disputes that clearly distinguish them from other types of minor disputes in which self-help pending arbitration is impermissible. In addition, the court noted that sympathetic action could be enjoined pending arbitration in every case, if carriers can obtain injunctive relief simply by claiming that such action raises an issue of contract interpretation, thus depriving employees of crucial support from their fellow workers.

These considerations did not prohibit a military injunction, in the court's opinion, because military no-strike clauses appeared in the pilots' and engineers' agreements. Also, due to the military injunction against the flight attendants, sympathetic action affecting military flights would generate an independent work stoppage in operations exempt from the primary dispute.

Developments Pending Appeal

Cross-motions for stay of the military strike injunctions, and for a temporary injunction against the commercial strike, were argued in the Ninth Circuit Court of Appeals on October 19, 1977. No decision was issued on these motions. The Teamsters were found in civil contempt of the military strike injunctions by the district court on November 1, 1977 (A. 23a), based on conduct the district court found to have begun on October 30, 1977, and were found later that week to have purged themselves of contempt (A. 27a). The strike ended in early January, 1978. On January 12, 1978, the parties executed a new collective-bargaining agreement that resolved all issues over which the strike began. TIA's flight attendants selected another union, the Association of Flight Attendants, to represent them on June 4, 1979. The court of appeals issued an order on July 5, 1979, directing the parties to show cause why the appeals should not be dismissed as moot (A. 29a).[5]

Decision Of The Court Of Appeals

On appeal, the Ninth Circuit panel held that the case was not mooted by the ending of the strike, the execution of a new collective-bargaining agreement, and loss of the Teamsters' certification to represent the flight attendants. It maintained that the parties had not settled the controversies which spawned this litigation because TIA's claim for compensatory fines for contempt of the preliminary injunction remained outstanding. Passing to the merits, the court of appeals upheld the district court's decision that the Teamsters had not breached their bargaining duty (an issue not presented by the petition), and held that the lower court had acted without jurisdiction in specifically enforcing the military no-strike clause.

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[5] The references in this paragraph are to the appendix to the petition filed in Case No. 80-478.

In the panel majority's considered opinion, the Norris-LaGuardia Act, 29 U.S.C. § 104, prohibited enforcement of the military no-strike clause by injunctive order. The clause had been opened for negotiation and mediation; thus, its threatened breach did not constitute a violation of the RLA's major dispute provisions because the Act's mandatory procedures had been exhausted (Pet. App., at A-48). The court of appeals also concluded that a threatened breach of the military no-strike clause would not give rise to a minor dispute referable to arbitration.[6] It reasoned that the threatened breach was "so clear that arbitration is not necessary to determine the violation . . ." (Pet. App., A-55). Since the court of appeals was not "persuaded that a substantial purpose unique to the RLA, or protection of its dispute settlement mechanisms, would be substantially furthered by specific enforcement of the clause," it declined to sustain the district court's military injunction against the flight attendants (Pet. App., at A-49 to -50).

On the other hand, the court of appeals held that the district court had jurisdiction to enjoin the flight engineers and pilots from honoring the flight attendants' picket lines around commercial and military flights until completion of the minor dispute mechanism established their right to engage in sympathetic action. It thought *Buffalo Forge's* reasoning inapplicable to the RLA, stating that considerations such as the avoidance of judicial intrusion into arbitrable disputes, the scope of permissible pre-arbitration remedies, and the effect of its decision on the settlement of disputes by arbitration, are not present

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[6] In this regard, the Flight Attendant Agreement with its arbitration provisions had expired; moreover, the dispute over military flying arose after the Act's major dispute provisions had run their course. Consequently, the dispute occurred after the duty to arbitrate under the Flight Attendant Agreement had ended. This fact was recognized by the court of appeals (Pet. App., at A-48 to -49).

here. Not only is arbitration a substitute for sympathetic action, in the court's view, but maintenance of the status quo is appropriate to prevent a subsequent award from being meaningless where it is "clear" that sympathetic action violates a no-strike pledge. The appellate court declined, as had the district court, to consider TIA's alternative "argument that regardless of any contract provisions, all sympathy strikes may be enjoined as violating policies expressed in the RLA" (Pet. App., at A-82).

The case was remanded to the district court for consideration of the contempt issue in light of the language of the no-strike clauses. Rehearing was denied, with the following statement by Judge Goodwin:

> "I would modify the majority opinion to hold that a sympathy strike is a major dispute if the work stoppage with which the sympathy strike is allied is a major dispute. I do not read the Railway Labor Act cases as extending to major disputes the power to enjoin." [Pet. App., at A-84.]

REASONS FOR DENYING THE WRIT [7]

I. THE DECISION OF THE COURT BELOW, DENYING SPECIFIC ENFORCEMENT TO THE MILITARY NO-STRIKE CLAUSE, FOLLOWS THIS COURT'S WELL-ESTABLISHED PRECEDENTS, CONFORMS TO THE DECISIONS OF OTHER CIRCUIT COURTS, AND DEALS WITH AN ISSUE LIKELY TO BE OF HISTORICAL INTEREST ONLY.

A. In declining to permit specific enforcement of the military no-strike clause after exhaustion of the RLA's major dispute procedures, the court below adhered to this Court's decisions. Thus, it has long been recognized that "parties who have unsuccessfully exhausted the Railway Labor Act's procedures for resolving a major dispute [may] employ the full range of whatever peaceful economic power they can muster. . . ." *BRT* v. *Jacksonville Terminal Co.*, 394 U.S. 369, 392 (1969). See also *Railway Clerks* v. *Florida E. Coast Ry.*, 384 U.S. 238, 244 (1966); *BLE* v. *Baltimore & O. R.R.*, 372 U.S. 284 (1963). Under the statutory scheme, "compulsions go only to insure that the [Act's] procedures are exhausted before resort can be had to self-help. . . ." *BRT* v. *Jacksonville Terminal Co., supra*, 394 U.S. at 380; *Elgin J. & E. R.R.* v. *Burley*, 325 U.S. 711, 725 (1945).

There is no provision in the RLA, comparable to § 301 of the LMRA, 29 U.S.C. § 185, that gives an employer any right of action against a union for breach of an

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[7] As noted in our petition in No. 80-478, at 6-9, this case is moot under the standards enunciated by this Court in *Gompers* v. *Buck's Stove & Range Co.*, 221 U.S. 418 (1911). Accordingly, consideration of the questions presented by TIA's petition in No. 80-480 is foreclosed. It would be appropriate, however, to grant the writ for the purpose of vacating the Ninth Circuit Court of Appeals' judgment and remanding the cause for dismissal because of mootness. See *United States* v. *Munsingwear*, 340 U.S. 36, 41 (1950).

employment contract. *Eastern Air Lines, Inc.* v. *FEIA*, 340 F.2d 104, 106-07 (5th Cir.), *cert. denied*, 382 U.S. 811 (1965). The RLA's major dispute provisions are not concerned with the enforcement of agreements, but with assuring that rates of pay, rules and working conditions are not changed until the Act's machinery (i.e., conference, negotiation and mediation) has been afforded full opportunity to induce voluntary settlement. There is simply no basis in the RLA for implying a cause of action for court enforcement of a no-strike clause.[8] As this Court has indicated, decisional law "negate[s] the 'implication' of an independent federal remedy against self-help. . . ." *BRT* v. *Jacksonville Terminal Co.*, *supra*, 394 U.S. at 380.

Moreover, the Norris-LaGuardia Act, 29 U.S.C. § 104, insulates unions from injunctions specifically enforcing contract terms. *Pan American World Airways* v. *FEIA*, 306 F.2d 840, 846-47 (2d Cir. 1962); *W. L. Mead, Inc.* v. *IBT*, 217 F.2d 6, 8-10 (1st Cir. 1954), *cert. dismissed*, 352 U.S. 802 (1956). Norris-LaGuardia's jurisdictional limitations, expressing a basic policy against the injunction of activities of labor unions, are fully applicable to cases arising under the RLA. *Railroad Telegraphers* v. *Chicago & N.W. Ry.*, 362 U.S. 330, 342 (1960).

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[8] Cf. *General Committee* v. *Missouri-Kansas-Texas R.R.*, 320 U.S. 323, 337 (1943), where this Court said:

> "In view of the pattern of this legislation and its history the command of the Act should be explicit and the purpose to afford a judicial remedy plain before an obligation enforcible in the courts should be implied. Unless that test is met the assumption must be that Congress fashioned a remedy available only in other tribunals. There may be as a result many areas in this field where neither the administrative nor the judicial function can be utilized. But that is only to be expected where Congress still places such great reliance on the voluntary process of conciliation, mediation and arbitration. See H. Rep. No. 1944, 73d Cong., 2d Sess., p. 2. Courts should not rush in where Congress has not chosen to tread."

This Court has repeatedly rejected the notion that no-strike clauses can be specifically enforced by injunctive orders issued by the federal courts. Where, as here, the violation claimed is breach of a private contract, and no additional public policy is threatened, the anti-injunction policy of Norris-LaGuardia prevails. *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195, 225 (1962) (Brennan, J., dissenting). See also *Boys Markets, Inc.* v. *Retail Clerks*, 398 U.S. 235, 249 (1970). Aside from the enforcement of agreements to arbitrate and arbitral awards, this "Court has never indicated that the courts may enjoin actual or threatened contract violations despite the Norris-LaGuardia Act. . . ." *Buffalo Forge Co.* v. *USW*, *supra*, 428 U.S. at 409.

The court below correctly determined that breach of the military no-strike clause threatened no public policy inherent in the RLA's dispute settlement procedures, stating:

> "[A]fter major dispute procedures are completely exhausted, with reasonable efforts having been made to reach an agreement, see *Chicago & N.W. Ry.* [v. *UTU*, 402 U.S. 570 (1971)], the policies peculiar to the RLA are also exhausted, and the parties are governed by general labor law principles. The Norris-LaGuardia Act was passed to limit our role in enforcing labor contracts, in part because of mistakes of the past and in part, perhaps, for fear that personal bias sometimes difficult to detect even in ourselves will weigh too heavily in the enforcement process. See, e.g., [*BRT* v.] *Chicago River* [*& I. R.R.*, 353 U.S. 30,] at 40-41, 77 S.Ct. [635,] at 640-641 [(1957)]; *F. Frankfurter & N. Greene*, [*The Labor Injunction* (1930).] Congress has mandated the courts not to alter through injunctions the economic balance between employers and unions without a weighty statutory reason for doing so. The RLA plan for avoiding disruption is not threatened by the

> flight attendants' strike. . . ." [Pet. App., at A-53 (footnote omitted).]

Accordingly, it held that Norris-LaGuardia's anti-injunction policy prevailed and barred specific enforcement of the military no-strike clause.

TIA urges here, as it argued below, that § 2, First of the RLA,[9] constitutes a contract enforcement device, independent of the Act's status quo provisions applicable to major disputes, that allows the federal courts to enjoin actual and threatened contract breaches. But this view is inconsistent with *Detroit & Toledo Shore Line R.R.* v. *UTU*, 396 U.S. 142 (1969). There this Court, referring to the legislative history of the 1926 Act, noted the relationship between § 2, First and the status quo (45 U.S.C. §§ 155, 156 & 160) provisions of the Act. "These provisions must be read in conjunction with the implicit status quo requirement in the obligation imposed upon parties by § 2, First. . . ." *Id.* at 151. This Court then stated explicitly:

> "While the . . . language of §§ 5, 6, and 10 is not identical in each case, *we believe that these provisions, together with § 2, First, form an integrated, harmonious scheme for preserving the status quo from the beginning of the major dispute through the final 30-day 'cooling-off' period.* . . . The obligation of both parties during a period in which any of these status quo provisions is properly invoked is to preserve and maintain unchanged those actual, objec-

[9] 45 U.S.C. § 152, First states as follows:

> "It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

> tive working conditions and practices, broadly conceived, which were in effect prior to the time the pending dispute arose and which are involved in or related to that dispute." [*Id.* at 152-53. (Emphasis added and footnote omitted.)]

Chicago & N.W. Ry. v. *UTU*, *supra*, 402 U.S. 570, is fully consistent with this perception of the statutory scheme. In that case, the Court held that Section 2, First's duty to exert every reasonable effort to make agreements and settle disputes, akin to the duty to bargain in good faith under the National Labor Relations Act, 29 U.S.C. § 158(a)(5), (b)(3), (d), was a legal obligation enforceable by the judiciary. The Court's rationale was both simple and compelling: "The strictest compliance with the formal procedures of the Act is meaningless if one party goes through the motions with 'a desire not to reach an agreement.' . . . [A]t least to this extent the duty to exert every reasonable effort is of the essence." 402 U.S. at 578-79 (citations and footnote omitted). Therefore, as the court below noted (Pet. App., at A-54), injunctive relief was authorized in *Chicago & N.W.* because bad-faith bargaining threatens the integrity of the RLA's mandatory major dispute mechanism. This rationale is inapplicable here.

In short, there is nothing in *Chicago & N.W.*, or in similar cases dealing with "surface bargaining,"[10] to suggest that § 2, First authorizes the federal courts to remedy simple contract breaches by issuing injunctions contrary to the Norris-LaGuardia Act.[11] Equally unavail-

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[10] E.g., *Piedmont Aviation, Inc.* v. *ALPA*, 416 F.2d 633 (4th Cir. 1969), *cert. denied*, 397 U.S. 926 (1970).

[11] TIA's argument necessarily assumes that the federal courts have concurrent jurisdiction with the adjustment boards to remedy arguable contract violations giving rise to minor disputes. But the nature of the statutory scheme, and decisions interpreting it, foreclose this unprecedented interpretation of § 2, First. Congress made

ing is TIA's attempt to analogize voluntary interest arbitration under § 7 of the RLA to the instant case (Petition, at 9-10). The application of § 2, First to voluntary interest arbitration is not at all apparent. Section 8 of the Act independently prohibits unilateral revocation of a voluntary agreement to arbitrate contract terms once the arbitration agreement has been properly signed and acknowledged. 45 U.S.C. § 158(n). Court enforcement of the final award is provided for in § 9 of the Act. 45 U.S.C. § 159, Second. Certainly Congress would not have enacted specific enforcement machinery for interest arbitration, if § 2, First had the effect contended for by TIA.

B. TIA's claim that a conflict of decision exists among the courts of appeal is mistaken. No circuit court has held, or even intimated, that collective-bargaining agreements can be enforced by injunctive order.[12] *Seaboard World Airlines, Inc.* v. *TWU*, 425 F.2d 1086 (1970), *adhered to on further consideration*, 443 F.2d 437 (2d Cir. 1971) dealt with an entirely different issue—whether a strike designed to force bargaining over a subject the parties have withdrawn from the scope of § 6 by an agreement not to reopen can be enjoined—and involves no conflict with the lower court's decision in the instant case.

In *Seaboard*, the parties had entered into an agreement in 1964 that purported to represent a "permanent solu-

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the jurisdiction of the adjustment boards over alleged contract violations exclusive, and narrowly circumscribed the courts' role in the resolution of such contract disputes. E.g., *Union Pac. R.R.* v. *Sheehan*, 439 U.S. 89 (1978), *rehearing denied*, 439 U.S. 1135 (1979).

[12] E.g., *Eastern Air Lines, Inc.* v. *FEIA*, *supra*, 340 F.2d at 106-07; *W. L. Mead, Inc.* v. *IBT*, *supra*, 217 F.2d at 8-10; cf. *Pan American World Airways* v. *FEIA*, *supra*, 306 F.2d at 846-47 (rejecting "accommodation" of Norris-LaGuardia's anti-injunction mandate after exhaustion of the RLA's major dispute procedures).

tion" of their dispute over a job security issue involving flight navigators displaced by technological change. The agreement, by its terms, could be reopened in 1974, but only as to wages. In 1969, the union attempted to reopen; however, the carrier refused to negotiate and sought injunctive relief against a threatened strike. The Act's major dispute provisions were not exhausted. Indeed, the dispute between the parties was whether the carrier was obligated to bargain over issues the parties had agreed would not be reopened. The court of appeals upheld injunctive relief against the strike until the district court could rule on the union's contention that the 1964 contract bar against reopening was illegal. On the second appeal, the court held that parties may "bind themselves against reopening for a period reasonable under the particular circumstances at issue." 443 F.2d at 439. The union was enjoined from forcing reopening by economic action.

A strike designed to expand the subjects over which a carrier is obligated to bargain, like any failure to bargain in good faith,[13] threatens the integrity of the RLA's dispute settlement procedures. To say that an injunction is warranted in such circumstances, however, is much different than saying the courts may freely enjoin actual or threatened contract violations despite the Norris-LaGuardia Act. *Seaboard* does not stand for the latter proposition; consequently, "its reasoning does not support TIA's view of section 152" (Pet. App., at A-55).

Obviously, the instant case does not involve the bargainability of the Teamsters' § 6 Notice. There was no prescription, by contract or otherwise, against opening

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[13] See generally *Japan Air Lines Co.* v. *IAM*, 538 F.2d 46, 52-53 (2d Cir. 1976) (strike over a non-mandatory bargaining subject violates § 2, First); *Pullman Co.* v. *Order of Ry. Conductors*, 316 F.2d 556 (7th Cir.), *cert. denied*, 375 U.S. 820 (1963) (strike over issue allegedly beyond the scope of the union's § 6 Notice; on appeal, § 6 Notice held adequate).

the military no-strike clause for proposed changes in accordance with § 6 of the Act. Nor did TIA ever claim that the union's proposal to amend or delete the clause was not a bargainable subject. It simply declined to eliminate or change the military no-strike clause when the matter was covered in mediation sessions. Having exhausted the Act's procedures in an unsuccessful, good-faith effort to reach agreement over changes in wages and working conditions, including changes in the military no-strike provision, the union's resort to self-help to compel the changes it had proposed offended no statutory policy governing the resolution of disputes. In this respect, *Seaboard* is readily distinguishable.

C. Finally, it should be noted that the enforceability of military "no work stoppage" agreements is unlikely to constitute a significant issue in the future. The Department of the Air Force has terminated its policy of requiring or encouraging participants in the MAC program to obtain such agreements from their employees as a condition of qualifying for additional expansion business (i.e., business in excess of the fixed number of flights per month to which each MAC carrier is committed). The district court was troubled by the fact that "the administration of MAC expansion business will almost inevitably tend to strengthen the economic position of a struck airline, such as TIA, as against its striking employees" (Pet. App., at A-20). But it thought the matter was one for Executive branch resolution. Now that this resolution has occurred, it is doubtful that the courts will often be called upon to face the issue.

II. THE RLA'S MAJOR DISPUTE PROVISIONS DO NOT BAR EMPLOYEES FROM ENGAGING IN SYMPATHETIC ACTION, AND THE PETITION PRESENTS NO SUBSTANTIAL REASON WHY THIS QUESTION, WHICH WAS NOT RULED ON BELOW, SHOULD NOW BE DECIDED.

The court below held that the district court had jurisdiction to enjoin TIA's pilots and flight engineers from respecting picket lines established by its flight attendants, pending arbitration of the issue whether sympathetic action is permissible under the various no-strike clauses. The court of appeals' decision raises an important question of federal law regarding the jurisdictional limitations against the issuance of injunctions in labor disputes. This question is presented to the Court by the petitions filed in Nos. 80-470 and 80-478. The unions' petitions urge, as a reason for review, the conflict between the lower court's holding and this Court's decision in *Buffalo Forge Co.* v. *USW*, *supra*, 428 U.S. 397.

As indicated by the fourth question presented by TIA's petition, the carrier also believes that the impact of *Buffalo Forge* in the circumstances of this case constitutes an important question deserving review. Yet the ultimate question for which TIA seeks review bears no relationship to the holding of the court of appeals. In fact, neither of the courts below saw fit to pass on TIA's alternative argument that sympathetic action is foreclosed by the major dispute provisions of the RLA (Pet. App., at A-82). At the outset, we suggest that there are no exceptional circumstances involved here to justify resolution of an issue not passed on below. See *Singleton* v. *Wulff*, 428 U.S. 106, 120-21 (1976); *Youakim* v. *Miller*, 425 U.S. 231, 234 (1976).

The paucity of decisions dealing with the issue TIA asks this Court to decide attests to its relative unimportance, particularly since sympathetic action occurs fre-

quently in rail and airline disputes.[14] Certainly the claim that nondisputing employees, who themselves have not exhausted the major dispute provisions of the Act, cannot decline to cross the picket lines of those who have, has not been seriously made since this Court decided *BRT* v. *Jacksonville Terminal Co.*, *supra*, 394 U.S. 369. There the Court, in the context of a claimed secondary boycott illegal under state law, concluded that "[p]eaceful primary strikes and picketing incident thereto lie within the core of protected self-help under the Railway Labor Act." *Id.* at 386. It also noted that, even "[r]ead narrowly," earlier decisions "negate[d] the 'implication' of an independent federal remedy against self-help. . . ." *Id.* at 380.

Equally important, the analytical flaws in TIA's suggestion that the RLA's major dispute provisions bar sympathetic action are so glaring that the question presented for review can be fairly described as *insubstantial.* Nowhere does the RLA prohibit strikes during the term of an agreement. Instead, the Act prohibits carriers from changing established rates of pay, rules or working conditions, and unions from resorting to self-help to compel such changes, until the Act's major dispute provisions are exhausted. 45 U.S.C. §§ 155, 156 & 160; *Detroit & Toledo Shore Line R.R.* v. *UTU*, *supra*, 396 U.S. at 152-53. Therefore, the Act's major dispute mechanism is not triggered by a strike alone, but by a dispute over changes in agreements and objective working conditions. Unless the strike is related to an unprocessed major dispute, no injunction may issue under the Act's status quo provisions. *Eastern Air Lines, Inc.* v. *FEIA*, *supra*,

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[14] E.g., *BRT* v. *Atlantic Coast Line R.R.*, 362 F.2d 649 (5th Cir.), *aff'd by an equally divided court*, 385 U.S. 20 (1966); *BLFE* v. *Florida E. Coast Ry.*, 346 F.2d 673 (5th Cir. 1965); *Chicago & Ill. Midland Ry.* v. *BRT*, 315 F.2d 771 (7th Cir.), *vacated as moot*, 375 U.S. 18 (1963).

340 F.2d at 106; *Pan American World Airways* v. *FEIA*, *supra*, 306 F.2d at 846-48.

In the instant case, there was no underlying dispute between TIA and its engineers or pilots. The crewmembers honored the flight attendants' picket lines solely to support the attendants' bargaining position. No credible claim can be made that sympathetic action by the engineers and pilots was somehow related to a change in the crewmembers' agreements or working conditions. Indeed, the petition suggests no basis for such a claim (Petition, at 20-21); it states only that the crewmembers' sympathetic action violated their agreements' general no-strike clauses. But as TIA argued, the unions acknowledged, and both lower courts found, this claim generated a minor dispute between TIA and the crewmembers. The major dispute involved here (between the flight attendants and the carrier) was fully processed through the Act's mandatory procedures. Thus, the crewmembers' sympathetic action plainly did not violate the Act's status quo requirement.[15]

TIA's notion that the Act generally prohibits strikes, unless contractually permitted (Petition, at 21-22), is contrary to this Court's conclusion that "[t]he right to strike finds support, not only in analogy to the NLRA, but in the history of, and decisions under, the Railway Labor Act itself." *BRT* v. *Jacksonville Terminal Co.*, *supra*, 394 U.S. at 390 n.24. See also *Coca Cola Bottling*

[15] In Appendix E of Respondents' Brief to the Ninth Circuit Court of Appeals, we canvassed the National Mediation Board's most up-to-date strike statistics which then covered the period 1954-1975. There is no record of the small groups mentioned by TIA (Petition, at 15) having struck at all. Of the 177 strikes in the rail and air industries during the 21-year period, only 24 were by groups of less than 40 employees, and 50% of the latter strikes lasted less than 10 days. In short, the spectre of transportation disruption raised by TIA is refuted by actual experience in the industries involved.

Co. v. *Teamsters Local 326*, 104 L.R.R.M. 2776 (3d Cir. 1980); *NLRB* v. *C.K. Smith & Co.*, 569 F.2d 162 (1st Cir. 1977), *cert. denied*, 436 U.S. 957 (1978); and *Gary Hobart Water Corp.* v. *NLRB*, 511 F.2d 284 (7th Cir.), *cert. denied*, 423 U.S. 925 (1975), in which the courts of appeal declined to assume that sympathetic action was prohibited by broad, general no-strike language in the absence of evidence showing a "clear and unmistakable waiver" of the right to honor primary picket lines.

The considerations discussed above indicate conclusively that the issue presented for review by TIA's petition is insubstantial and does not warrant this Court's attention. Also, we see no reason why the important federal question raised by the decision below, and presented for review in No. 80-478, should be obscured by further consideration of the tangential issue TIA asks this Court to decide.

CONCLUSION

For the foregoing reasons, the petition in No. 80-480 for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX

STATUTES INVOLVED

The portions of the Railway Labor Act, as amended, involved in this case are Section 2, First, 45 U.S.C. § 152; Section 2, Fourth, 45 U.S.C. § 152, Fourth; Section 2, Seventh, 45 U.S.C. § 152, Seventh; Section 5, First, 45 U.S.C. § 155, First; Section 6, 45 U.S.C. § 156; Section 7, 45 U.S.C. § 157; Section 8(n), 45 U.S.C. § 158(n); and Section 9, Second, 45 U.S.C. § 159, Second.

Section 2, First of the Act states:

> First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Section 2, Fourth states:

> Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter. No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees. . . .

Section 2, Seventh states:

> Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this title.

Section 5, First states:

> First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:
>
> (a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.
>
> (b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.
>
> The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.
>
> In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 160 of this title) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this chapter.
>
> If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at

once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 160 of this title, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

Section 6 states:

Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

Section 7 states:

First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in

the manner provided in sections 151-156 of this title, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however,* That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this chapter or otherwise.

Second. Such board of arbitration shall be chosen in the following manner:

(a) In the case of a board of three the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name one arbitrator; the two arbitrators thus chosen shall select a third arbitrator. If the arbitrators chosen by the parties shall fail to name the third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Mediation Board.

(b) In the case of a board of six the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name two arbitrators; the four arbitrators thus chosen shall, by a majority vote, select the remaining two arbitrators. If the arbitrators chosen by the parties shall fail to name the two arbitrators within fifteen days after their first meeting, the said two arbitrators, or as many of them as have not been named, shall be named by the Mediation Board.

Third. When the arbitrators selected by the respective parties have agreed upon the remaining arbitrator or arbitrators, they shall notify the Mediation Board; and, in the event of their failure to

agree upon any or upon all of the necessary arbitrators within the period fixed by this chapter, they shall, at the expiration of such period, notify the Mediation Board of the arbitrators selected, if any, or of their failure to make or to complete such selection.

The board of arbitration shall organize and select its own chairman and make all necessary rules for conducting its hearings: *Provided, however,* That the board of arbitration shall be bound to give the parties to the controversy a full and fair hearing, which shall include an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel, or by other representative as they may respectively elect.

Upon notice from the Mediation Board that the parties, or either party, to an arbitration desire the reconvening of the board of arbitration (or a subcommittee of such board of arbitration appointed for such purpose pursuant to the agreement to arbitrate) to pass upon any controversy over the meaning or application of their award, the board, or its subcommittee, shall at once reconvene. No question other than, or in addition to, the questions relating to the meaning or application of the award, submitted by the party or parties in writing, shall be considered by the reconvened board of arbitration or its subcommitte.

Such rulings shall be acknowledged by such board or subcommittee thereof in the same manner, and filed in the same district court clerk's office, as the original award and become a part thereof.

No arbitrator, except those chosen by the Mediation Board, shall be incompetent to act as an arbitrator because of his interest in the controversy to

be arbitrated, or because of his connection with or partiality to either of the parties to the arbitration.

Each member of any board of arbitration created under the provisions of this chapter named by either party to the arbitration shall be compensated by the party naming him. Each arbitrator selected by the arbitrators or named by the Mediation Board shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, while serving as an arbitrator.

The board of arbitration shall furnish a certified copy of its award to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified under the hands of at least a majority of the arbitrators, to the clerk of the district court of the United States for the district wherein the controversy arose or the arbitration is entered into, to be filed in said clerk's office as hereinafter provided. The said board shall also furnish a certified copy of its award, and the papers and proceedings, including testimony relating thereto, to the Mediation Board to be filed in its office; and in addition a certified copy of its award shall be filed in the office of the Interstate Commerce Commission: *Provided, however,* That such award shall not be construed to diminish or extinguish any of the powers or duties of the Interstate Commerce Commission, under the Interstate Commerce Act, as amended.

A board of arbitration may, subject to the approval of the Mediation Board, employ and fix the compensation of such assistants as it deems necessary in carrying on the arbitration proceedings. The

compensation of such employees, together with their necessary traveling expenses and expenses actually incurred for subsistence, while so employed, and the necessary expenses of boards of arbitration, shall be paid by the Mediation Board.

Whenever practicable, the board shall be supplied with suitable quarters in any Federal building located at its place of meeting or at any place where the board may conduct its proceedings or deliberations.

All testimony before said board shall be given under oath or affirmation, and any member of the board shall have the power to administer oaths or affirmations. The board of arbitration, or any member thereof, shall have the power to require the attendance of witnesses and the production of such books, papers, contacts, agreements, and documents as may be deemed by the Board of arbitration material to a just determination of the matters submitted to its arbitration, and may for that purpose request the clerk of the district court of the United States for the district wherein said arbitration is being conducted to issue the necessary subpoenas, and upon such request the said clerk or his duly authorized deputy shall be, and he is, authorized, and it shall be his duty, to issue such subpoenas.

Any witness appearing before a board of arbitration shall receive the same fees and mileage as witnesses in courts of the United States, to be paid by the party securing the subpoena.

Section 8(n) states in part:

The said agreement to arbitrate, when properly signed and acknowledged as herein provided, shall not be revoked by a party to such agreement: *Provided, however,* That such agreement to arbitrate

may at any time be revoked and canceled by the written agreement of both parties, signed by their duly accredited representatives, and (if no board of arbitration has yet been constituted under the agreement) delivered to the Mediation Board or any member thereof; or, if the board of arbitration has been constituted as provided by this chapter, delivered to such board of arbitration.

Section 9, Second states:

An award acknowledged and filed as herein provided shall be conclusive on the parties as to the merits and facts of the controversy submitted to arbitration, and unless, within ten days after the filing of the award, a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties.

The portion of the Norris-LaGuardia Act involved in this case is Section 104, 29 U.S.C. § 104.

Section 104 states:

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization,

regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

The portions of the National Labor Relations Act, as amended, analagously involved in this case are Section 8(a)(5), 29 U.S.C. § 158(a)(5); Section 8(b)(3), 29 U.S.C. § 158(b)(3); and Section 8(d), 29 U.S.C. § 158(d).

Section 8(a)(5) states:

(a) It shall be an unfair labor practice for an employer—

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title.

Section 8(b)(3) states:

(b) It shall be an unfair labor practice for a labor organization or its agents—

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 159(a) of this title;

Section 8(d) states:

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days

prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later.

The duties imposed upon employers, employees, and labor organizations by paragraphs (2)-(4) of this subsection shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 159(a) of this title, and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his

status as an employee of the employer engaged in the particular labor dispute, for the purpose of sections 158 to 160 of this title, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

The portions of the Labor-Management Relations Act, as amended, analagously involved in this case are Section 301, 29 U.S.C. § 185.

Section 301 states:

(a) Suits for violation of contracts between an employer and a labor organization representing employes in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization main-

tains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling. June 23, 1947, c. 120, Title III, § 301, 61 Stat. 156.

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470

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478